

**UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF
TEXAS, DALLAS DIVISION**

In Re: Highland Capital Management, L.P § Case No. **19-34054-SGJ11**

Charitable DAF Fund, L.P et al

Appellant

§

vs.

§

21-03067

Highland Capital Management, L.P

§

Appellee

§

3:23-CV-01503-B

[167] Order granting Defendant Highland Capital Management, L.P.'s Renewed motion to dismiss adversary proceeding (related document # [122](#)) Entered on 6/25/2023.

Volume 8

APPELLANT RECORD

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and CLO Holdco, Ltd.*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:	§ Chapter 11
	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§ Case No. 19-34054-sgj11
	§
Debtor.	§
	§
CHARITABLE DAF FUND, L.P. AND CLO	§
HOLDCO, LTD., DIRECTLY AND DERIVATIVELY	§
	§
Plaintiffs,	§ Adversary Proceeding No.
	§
vs.	§ 21-03067-sgj11
	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
HIGHLAND HCF ADVISOR, LTD., AND	§
HIGHLAND CLO FUNDING LTD., NOMINALLY	§
	§
Defendant.	§
	§

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**APPELLANTS' SECOND AMENDED STATEMENT OF ISSUES
AND DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, The Charitable DAF Fund, L.P. and CLO Holdco, Ltd. ("Appellants") hereby designate the following items to be included in the record and identify the following issues with respect to

their appeal of the Order Granting Defendant Highland Capital Management, L.P.'s "Renewed Motion to Dismiss Complaint" [Adv. Proc. Doc. No. 122] which was entered by the United States Bankruptcy Court for the Northern District of Texas on June 25, 2023.

I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL

- Whether the Bankruptcy Court had jurisdiction to rule on Highland Capital Management L.P.'s Renewed Motion to Dismiss Complaint
- Whether the Renewed Motion to Dismiss Complaint was improperly granted

II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD

Vol. 1
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1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 21-03067-sgj11 [Doc. 168].

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2. The judgment, order, or decree appealed from: Memorandum Opinion and Order Granting Defendant Highland Capital Management, L.P.'s "Renewed Motion to Dismiss Complaint" [Adv. Proc. Doc. No. 122] [Doc. 167].

000080

3. Docket Sheet kept by the Bankruptcy Clerk.

4. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 21-03067-sgj.

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No.	Date Filed	Docket No.	Description/Document Text
1	9/29/21	1	(36 pgs; 3 docs) Adversary case 21-03067. ORDER REFERRING CASE NUMBER 21-CV-0842-B from U.S District Court for the Northern District of Texas, Dallas Division to U.S. Bankruptcy Court for Northern District of Texas, Dallas Division. Complaint by Charitable DAF Fund, LP, CLO Holdco, Ltd. against Highland Capital Management, LP, Highland HCF Advisor Ltd., Highland CLO Funding, Ltd. Fee Amount \$350 (Attachments: # 1 Original Complaint # 2 Docket Sheet from 3:20-cv-0842-B) Nature(s) of suit: 02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)). (Okafor, M.)
2	9/29/21	2	(1 pg) Supplemental Document (cover sheet) by CLO Holdco Ltd., Charitable DAF Fund (RE: related document(s)) Adversary case 21-03067) [ORIGINALLY FILED IN 21-CV-0842 AS #2 ON 04/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)

Vol. 2 000139 000232 000239 000270 Thru Vol. 6	3	9/29/21	6	(93 pgs; 6 docs) MOTION for Leave to File First Amended Complaint filed by CLO Holdco Ltd., Charitable DAF Fund LP (Attachments: # 1 Exh 1_First Amended Complaint # 2 Exh 2_Motion for Authorization to Retain James Seery # 3 Exh 3_Order Approving Retention of James Seery # 4 Exh 4_Order Approving Settlement # 5 Proposed Order) (Bridges, Jonathan) (Entered: 04/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #6 ON 04/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	4	9/29/21	22	(7 pgs; 2 docs) MOTION for an Order to Enforce the Order of Reference filed by Highland Capital Management LP. (Attachments: # 1 Exhibit(s) A--Proposed Order) (Annable, Zachery) Modified text on 5/20/2021 (mjr). (Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #22 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	5	9/29/21	23	(31 pgs) Brief/Memorandum in Support filed by Highland Capital Management LP re: 22 MOTION for an Order to Enforce the Order of Reference. (Annable, Zachery) Modified text on 5/20/2021 (mjr).(Entered: 05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #23 ON 05/19/2021 IN U.S.DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	6	9/29/21	24	(926 pgs; 29 docs) Appendix in Support filed by Highland Capital Management LP re: 23 Brief/Memorandum in Support. (Attachments: # 1 Appendix 1 # 2 Appendix 2 # 3 Appendix 3 # 4 Appendix 4 # 5 Appendix 5 # 6 Appendix 6 # 7 Appendix 7 # 8 Appendix 8 # 9 Appendix 9 # 10 Appendix10 # 11 Appendix 11 # 12 Appendix 12 # 13 Appendix 13 # 14 Appendix 14 # 15 Appendix 15 # 16 Appendix 16 # 17 Appendix 17 # 18 Appendix 18 # 19 Appendix 19 # 20 Appendix 20 # 21 Appendix 21# 22 Appendix 22 # 23 Appendix 23 # 24 Appendix 24 # 25 Appendix 25 # 26 Appendix 26 # 27 Appendix 27 # 28 Appendix 28) (Annable, Zachery) Modified linkage and text on 5/20/2021 (mjr). (Entered:05/19/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #24 ON 05/19/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
Vol. 7 001196	7	9/29/21	26	(7 pgs; 2 docs) MOTION to Dismiss Complaint filed by Highland Capital Management LP (Attachments: # 1 Exhibit(s) A--Proposed Order) (Annable, Zachery) Modified text on 5/28/2021 (jmg).(Entered: 05/27/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #26 ON 05/27/2021 IN U.S.DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)

Vol. 7 001203 thru Vol. 8	8	9/29/21	28	(508 pgs; 14 docs) Appendix in Support filed by Highland Capital Management LP (Attachments: # 1 Appendix 1 # 2 Appendix 2 # 3 Appendix 3 # 4 Appendix 4 # 5 Appendix 5 # 6 Appendix 6 # 7 Appendix 7 # 8 Appendix 8 # 9 Appendix 9 # 10 Appendix 10 # 11 Appendix 11 # 12 Appendix 12 # 13 Appendix 13) (Annable, Zachery) (Entered: 05/27/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #28 ON 05/27/2021 IN U.S. DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
Vol. 9 001711	9	9/29/21	33	(1 pg) Amended Civil Cover Sheet by CLO Holdco Ltd, Charitable DAF Fund LP. Amendment to 2 Supplemental Document. (Sbaiti, Mazin) Modified text on 6/23/2021 (mjr). (Entered: 06/22/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #33 ON 06/22/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001712	10	9/29/21	36	(26 pgs) RESPONSE filed by CLO Holdco Ltd, Charitable DAF Fund LP re: 22 MOTION for an Order to Enforce the Order of Reference (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #36 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001738	11	9/29/21	37	(22 pgs) Appendix in Support filed by CLO Holdco Ltd, Charitable DAF Fund LP re 36 Response/Objection Response to Motion for an Order to Enforce the Order of Reference (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #37 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001760	12	9/29/21	38	(45 pgs) RESPONSE filed by CLO Holdco Ltd, Charitable DAF Fund LP re: 26 MOTION to Dismiss (Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint) (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #38 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001805	13	9/29/21	39	(88 pgs) Appendix in Support filed by CLO Holdco Ltd, Charitable DAF Fund LP re 38 Response/Objection to Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint (Sbaiti, Mazin) (Entered: 06/29/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #39 ON 06/29/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001893	14	9/29/21	42	(12 pgs) REPLY filed by Highland Capital Management LP re: 22 MOTION for an Order to Enforce the Order of Reference (Annable, Zachery) (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842AS #42 ON 07/13/2021 IN U.S.

			DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
VOL. 9	15	9/29/21	43 (852 pgs) Appendix in Support filed by Highland Capital Management LP re: 42 Reply. (Annable, Zachery) Modified text on 7/14/2021 (mjr). (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842AS #43 ON 07/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
001905 thru Vol. 13	16	9/29/21	45 (21 pgs) REPLY filed by Highland Capital Management LP re: 26 MOTION to Dismiss (Defendant Highland Capital Management, L.P.'s Motion to Dismiss Complaint) (Annable, Zachery) (Entered: 07/13/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #44 ON 07/13/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002757	17	9/29/21	57 (7 pgs; 2 docs) MOTION to Dismiss and Joinder in Motion to Dismiss of Highland Capital Management, L.P. filed by Highland CLO Funding Ltd. (Attachments: # 1 Proposed Order) Attorney Paul R Bessette added to party Highland CLO Funding Ltd (pty:dft) (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #57 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002778	18	9/29/23	58 (12 pgs) Brief/Memorandum in Support filed by Highland CLO Funding Ltd. re 57 MOTION to Dismiss and Joinder in Motion to Dismiss of Highland Capital Management, L.P. (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #58 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002785	19	9/29/23	59 (80 pgs; 5 docs) Appendix in Support filed by Highland CLO Funding Ltd re 58 Brief/Memorandum in Support of Motion (Attachments: # 1 Exhibit(s) A - Jackson v Dear # 2 Exhibit(s) B - Prudential Assurance v. Newman # 3 Exhibit(s) C - Harbourvest Settlement Agreement # 4 Exhibit(s) D - Boleat Declaration) (Bessette, Paul) (Entered: 08/30/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #59 ON 08/30/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
002797	20	9/29/21	64 (1 pg) ORDER OF REFERENCE: Pursuant to 28 U.S.C. § 157 and this District's Miscellaneous Order No. 33, this case is hereby REFERRED to Judge Stacey G. C. Jernigan of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, to be adjudicated as a matter related to the consolidated Chapter 11 Bankruptcy of Highland Capital Management, L.P., Chapter 11 Case No.19-34054. (Ordered by Judge Jane J. Boyle
002877			

Vol. 14				on 9/20/2021) (svc) (Entered: 09/20/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #64 ON 09/20/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)
	21	10/19/21	66	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP, 47 Motion to strike document filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 55 Motion to abate filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) Hearing to be held on 11/23/2021 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 26 and for 47 and for 55, (Annable, Zachery)
002878				
002883	22	11/22/21	71	(509 pgs; 2 docs) Witness and Exhibit List <i>for Hearing on November 23, 2021</i> filed by Defendant Highland Capital Management, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding). (Attachments: # 1 Exhibits 1-13) (Hayward, Melissa)
thru Vol. 16				
Vol. 17	23	11/22/21	72	(2 pgs) Witness List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 26 Motion to dismiss adversary proceeding, 47 Motion to strike (related document(s): 43 Document), 55 Motion to abate (related document(s) 1 Complaint), 69 Motion to abate <i>Plaintiffs' Amended Motion to Stay All Proceedings</i> (related document(s) 55 Motion to abate (related document(s) 1 Complaint))). (Sbaiti, Mazin)
003392				
003394	24	11/22/21	73	(189 pgs; 4 docs) Exhibit List <i>for November 23, 2021 hearing</i> filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 47 Motion to strike (related document(s): 43 Document), 55 Motion to abate (related document(s) 1 Complaint)). (Attachments: # 1 Exhibit 1_Defendant's Memorandum of Law in Support of Motion for Reconsideration # 2 Exhibit 2_Highland Memorandum in Support of Motion to Dismiss # 3 Exhibit 3_Order (I) Confirming Fifth Amended Plan of Reorganization of Highland) (Sbaiti, Mazin)
003583	25	12/7/21	80	(2 pgs) Order granting Highland CLO Funding, Ltd.'s motion to dismiss adversary as a party with prejudice (related document 57) Entered on 12/7/2021. (Okafor, Marcey) Modified text on 3/11/2022 (Okafor, Marcey).
003585	26	3/11/22	99	(26 pgs) Memorandum of Opinion and order granting motion to dismiss the adversary proceeding (RE: related document(s) 26 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Entered on 3/11/2022 (Okafor, Marcey)
003611	27	3/11/22	100	(26 pgs) Order granting motion to dismiss adversary proceeding with prejudice (related document #26) Entered on 3/11/2022. (Okafor, Marcey)

Vol. 18 003637	28	3/21/22	104	(29 pgs) Notice of appeal. Fee Amount \$298 filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 100 Order on motion to dismiss adversary proceeding). Appellant Designation due by 04/4/2022. (Sbaiti, Mazin)
003666	29	5/26/22	120	(177 pgs; 2 docs) Support/supplemental document <i>Motion to Supplement Appellate Record</i> filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 111 Appellant designation). (Attachments: # 1 Amended Transcript of January 14, 2021 Hearing) (Sbaiti, Mazin)
003843	30	6/9/22	121	(1 pg) DISTRICT COURT Order: Case 3:22-00695-B is hereby transferred to the docket of the Honorable Judge Jane J. Boyle for consolidation with The Charitable DAF Fund LP, et al. v. Highland Capital Management LP, Case No. 3:21-cv-3129-N. Judge Karen Gren Scholer no longer assigned to case.(RE: related document(s) 86 Notice of appeal filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 104 Notice of appeal filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 6/9/2022 (Whitaker, Sheniqua) (Entered: 06/10/2022)
003844	31	10/24/22	122	(7 pgs) Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (Annable, Zachery)
003851	32	10/14/22	123	(31 pgs) Brief in support filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Annable, Zachery)
Vol. 19 003882 Thru Vol 20	33	10/14/22	124	(513 pgs; 15 docs) Support/supplemental document (<i>Appendix in Support of Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Annable, Zachery)
Vol. 21 004395	34	10/27/22	126	(5 pgs) Notice of hearing (<i>Notice of Hearing and Briefing Schedule on Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Hearing to be held on 12/8/2022 at 09:30 AM at https://us-courts.webex.com/meet/jerniga for 122. (Annable, Zachery)

Vol. 21 004400 004410 004442 Thru Vol. 22	35	11/18/22	128	(10 pgs) Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (Sbaiti, Mazin)
	36	11/18/22	129	(32 pgs) Response opposed to (related document(s): 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Sbaiti, Mazin)
	37	11/18/22	130	(254 pgs; 2 docs) Response opposed to (related document(s): 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>) filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Attachments: # 1 Appendix) (Sbaiti, Mazin)
Vol. 22 004696 004717 004732 004737 004742	38	9/2/22	131	(21 pgs) DISTRICT COURT MEMORANDUM OPINION AND ORDER: The Court REVERSES and REMANDS the bankruptcy court's Motion to Dismiss Order and AFFIRMS the bankruptcy courts Motion to Stay Order. re: appeal on Civil Action number: Case 3:22-00695-B consolidated with 3:21-CV-3129-B, (RE: related document(s) 81 Order on motion to abate, 100 Order on motion to dismiss adversary proceeding). Entered on 9/2/2022 (Whitaker, Sheniqua) (Entered: 11/29/2022)
	39	12/2/22	133	(15 pgs) Reply to (related document(s): 129 Response filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 130 Response filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) filed by Defendant Highland Capital Management, LP. (Annable, Zachery)
	40	12/7/22	135	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding filed by Defendant Highland Capital Management, LP). Hearing to be held on 1/25/2023 at 01:30 PM at https://us-courts.webex.com/meet/jerniga for 122, (Annable, Zachery)
	41	12/7/22	136	(5 pgs) Notice of hearing filed by Defendant Highland Capital Management, LP (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Status Conference to be held on 1/25/2023 at 01:30 PM at https://us-courts.webex.com/meet/jerniga . (Annable, Zachery).
	42	12/9/22	138	(3 pgs) Response opposed to (related document(s): 128 Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) filed by Defendant Highland Capital Management, LP. (Annable, Zachery)

Vol. 22 004745	43	12/9/22	139	(25 pgs) Brief in support filed by Defendant Highland Capital Management, LP (RE: related document(s) 138 Response). (Annable, Zachery)
Vol. 23 004770	44	12/9/22	140	(280 pgs; 8 docs) Support/supplemental document (<i>Appendix in Support of Highland Capital Management, L.P.'s Response to Renewed Motion to Withdraw the Reference</i>) filed by Defendant Highland Capital Management, LP (RE: related document(s) 138 Response). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
Vol. 24 005050	45	12/16/22	144	(6 pgs) Reply to (related document(s): 138 Response filed by Defendant Highland Capital Management, LP) filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Sbaiti, Mazin)
005056 Thru Vol. 25.	46	1/23/23	145	(514 pgs; 15 docs) Witness and Exhibit List filed by Defendant Highland Capital Management, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7 # 8 Exhibit 8 # 9 Exhibit 9 # 10 Exhibit 10 # 11 Exhibit 11 # 12 Exhibit 12 # 13 Exhibit 13 # 14 Exhibit 14) (Annable, Zachery)
Vol. 26 005570	47	1/23/23	146	(280 pgs; 8 docs) Witness and Exhibit List filed by Defendant Highland Capital Management, LP (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188.). (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3 # 4 Exhibit 4 # 5 Exhibit 5 # 6 Exhibit 6 # 7 Exhibit 7) (Annable, Zachery)
Vol. 27 005850	48	1/23/23	147	(221 pgs; 7 docs) Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 122 Motion to dismiss adversary proceeding (<i>Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint</i>)). (Attachments: # 1 Exhibit 1_Excerpts from July 14, 2020 Hearing Transcript # 2 Exhibit 2_HCLOF Members Agreement Relating to the Company # 3 Exhibit 3_HarbourVest Settlement Agreement # 4 Exhibit 4_Order Approving Debtor's Settlement with HarbourVest # 5 Exhibit 5_HCLOF Offering # 6 Exhibit 6 Amended and Restated Investment Advisory Agreement) (Sbaiti, Mazin)
006071	49	1/23/23	148	(3 pgs) Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188.). (Phillips, Louis)
Vol. 28 006074	50	1/25/23	150	(56 pgs; 2 docs) Amended Witness and Exhibit List filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP (RE: related document(s) 147 List (witness/exhibit/generic), 149 List (witness/exhibit/generic)). (Attachments: # 1 Exh 7_Testimony of Mark Patrick at June 8, 2021 hearing) (Sbaiti, Mazin)

Vol. 28 006130	51	1/25/23	152	(3 pgs) Notice of Appearance and Request for Notice by Louis M. Phillips filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP. (Phillips, Louis)
	52	1/25/23	154	(1 pg) Court admitted exhibits date of hearing January 25, 2023 (RE: related document(s) 128 Motion for withdrawal of reference, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) (COURT ADMITTED DEFENDANT'S EXHIBITS #1, #2, #3, #4, #5 & #6 OFFERED BY ATTY GREG DEMO). (Edmond, Michael) (Entered: 01/27/2023)
Vol. 32 006925 006942 006960	53	2/6/23	158	Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 2/6/2023 (Okafor, Marcey)
	54	2/6/23	161	(18 pgs) DISTRICT COURT Notice of transmission of report and recommendation in re: renewed motion to withdraw reference. Civil Case # 3:22-cv-02802-S. (RE: related document(s) 158 Report and recommendation to the U.S. District Court by U.S. Bankruptcy Judge. (RE: related document(s) 128 Motion for withdrawal of reference filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.). Entered on 2/6/2023) (Whitaker, Sheniqua)
	55	4/3/23	165	(1 pg) DISTRICT COURT ORDER: The Court GRANTS the 11 Joint Motion to Transfer Proceeding and Consolidate Before Original Court and the above-numbered case (3:22-cv-02802-S) is transferred to the docket of the Honorable Judge Jane Boyle: Civil case 3:21-cv-00842-B (order referring case). (RE: related document(s) 1 Complaint filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd., 143 Notice of transmission of motion to withdraw reference). Entered on 4/3/2023 (Whitaker, Sheniqua) Modified on 4/10/2023 (Whitaker, Sheniqua). (Entered: 04/10/2023)

TRANSCRIPTS

006961	56	11/24/21	78	(104 pgs) Transcript regarding Hearing Held 11-23-2021 RE: Motion Hearing. THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 02/22/2022. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Liberty Transcripts/Dipti Patel, Telephone number 847-848-4907. (RE: related document(s) 75 Hearing held on 11/23/2021. (RE: related document(s) 55 MOTION to Stay filed by CLO Holdco Ltd, Charitable DAF Fund LP (Sbaiti, Mazin) (Entered: 08/26/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #55 ON 08/26/2021 IN U.S.
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			<p>DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)) (Appearances: J. Pomerantz and J. Morris for Highland Defendants; J. Jordan and P. Bessett for HCLOF; M. Sbaiti for Plaintiffs. Nonevidentiary hearing. Motion denied. Mr. Pomerantz to upload order.), 76 Hearing held on 11/23/2021. (RE: related document(s) 47 Motion to strike 43 Appendix in support filed by CLO Holdco, Ltd., Charitable DAF Fund, LP (Bridges, Jonathan) Modified text on 7/16/2021 (mjr). (Entered: 07/15/2021) [ORIGINALLY FILED IN 21-CV-0842 AS #47 ON 07/15/2021 IN U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION] (Okafor, M.)) (Appearances: J. Pomerantz and J. Morris for Highland Defendants; J. Jordan and P. Bessett for HCLOF; M. Sbaiti for Plaintiffs. Nonevidentiary hearing. Motion denied (Plaintiffs acknowledged complained-of Appendices it did not relate to Motion to Dismiss). Mr. Pomerantz to upload order.)). Transcript to be made available to the public on 02/22/2022. (Patel, Dipti)</p>
57	2/21/23	164	<p>164 (112 pgs) Transcript regarding Hearing Held 1/25/23 RE: HEARING ON DEFENDANT HIGHLAND CAPITAL MANAGEMENT L.P.'S RENEWED MOTION TO DISMISS COMPLAINT (122) AND STATUS CONFERENCE RE: MOTION FOR WITHDRAWAL OF REFERENCE FILED BY PLAINTIFF CLO HOLDCO, LTD., PLAINTIFF CHARITABLE DAF FUND, LP (128). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 90 DAYS AFTER THE DATE OF FILING. TRANSCRIPT RELEASE DATE IS 05/22/2023. Until that time the transcript may be viewed at the Clerk's Office or a copy may be obtained from the official court transcriber. Court Reporter/Transcriber Dipti Patel, Telephone number 847-848-4907. (RE: related document(s) 155 Hearing held on 1/25/2023. (RE: related document(s) 122 Motion to dismiss adversary proceeding, (Defendant Highland Capital Management, L.P.'s Renewed Motion to Dismiss Complaint) filed by Defendant Highland Capital Management, LP filed by Defendant Highland Capital Management, LP) (Appearances: J. Morris and G. Demo for Movants; L. Phillips and M. Sbaiti for Plaintiffs. Evidentiary hearing (appendices). Court took matter under advisement.), 156 Hearing held on 1/25/2023. (RE: related document(s) 128 Motion for withdrawal of reference. Fee amount \$188, filed by Plaintiffs CLO Holdco, Ltd., Charitable DAF Fund, LP filed by Plaintiff Charitable DAF Fund, LP, Plaintiff CLO Holdco, Ltd.) (Appearances: J. Morris and G. Demo for Movants; L. Phillips and M. Sbaiti for Plaintiffs. Evidentiary hearing (appendices). Court announced it will recommend denial to District Court. Court is working on Report & Recommendation.)). Transcript to be made available to the public on 05/22/2023. (Patel, Dipti)</p>

Dated: July 14, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically through the Court's ECF system, which provides notice to all parties of interest, on this 14th day of July, 2023.

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

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1 They were looking to take additional outside capital.

2 They would -- they would pay down or take money out of the
3 transaction, Highland would, or ultimately Mr. Dondero, and
4 they would -- they would seek to invest in Acis CLOs,
5 Highland's 1.0 CLOs. And then with respect to the Acis CLOs,
6 and potentially new CLOs, but with the Acis CLOs, they'd seek
7 to reset those and capture what they thought would be an
8 opportunity in the market to -- to really use the assets that
9 were there, not have to gather assets in the warehouse but be
10 able to use those assets to reset them to market prices for
11 the liabilities and then make money on the equity.

12 Q Do you have an understanding --

13 A Then --

14 Q I'm sorry. Go ahead.

15 A Why don't I continue? So, the transaction, they found
16 HarbourVest as a potential investor, and the basis of the
17 transaction was that they would make an investment into Acis.

18 Shortly before the transaction, and while they were doing
19 diligence, Mr. Terry received his arbitration award. I
20 believe that was in October of 2017. The transaction with
21 HarbourVest closed in mid- to late November of 2017. But Mr.
22 Terry was not an integral part. Indeed, he wasn't going to be
23 a key man. He had been long gone from Highland by that time.

24 What the -- I think you asked me originally what the basis
25 of their claim was. The transaction went forward, and the

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1 basis of their claim is that they really were never -- nothing
2 was disclosed to them about the nature of the dispute with Mr.
3 Terry other than in the highest-level terms; the animosity
4 with respect to which that dispute was held by Highland and
5 potentially Mr. Terry; and really, how those costs would be
6 borne and risks be borne by the investment that they were
7 making.

8 That was, in essence, the transaction and the high-level
9 view of their claim.

10 Q Okay. Just a few very specific facts. Do you have an
11 understanding as to how much HarbourVest invested and what
12 they got in exchange for that investment?

13 A Yeah. HarbourVest invested in a couple tranches, and I
14 forget the exact dates, but approximately \$75 million
15 originally, and then they added another five. Some
16 distributions were made in the first half of 2018, putting
17 their net investment in the mid-seventies on the investment,
18 which now is worth about 22-1/2 million bucks.

19 Q And what percentage interest in HCLOF did HarbourVest
20 acquire, to the best of your knowledge?

21 A They have 49.98 percent of HCLOF. HCLOF, just to refresh
22 -- the Court is, I think, well aware of this, but to refresh,
23 is a Guernsey entity. Not -- not atypical for structures of
24 this type to use offshore jurisdictions and sell the
25 securities under -- at least to U.S. -- can't sell them to

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1 U.S. investors unless they qualify, and these are sold under
2 Reg S to -- to investors that otherwise qualify. And
3 HarbourVest was investing in that transaction through the
4 Guernsey structure.

5 Q And do you have an understanding as to who owned the 50-
6 plus percent of HCLOF that HarbourVest was not going to
7 acquire?

8 A Yeah. There's -- you can tell by the name. HCLOF is
9 Highland CLO Funding. This is a Highland vehicle. So
10 Highland owned and controlled the vehicle. The DAF, which is
11 -- which is Dondero-controlled trusts, have the -- 49 percent.
12 Highland has, I believe, around .63-65 percent directly. And
13 then Highland employees at the time who were involved in the
14 business owned another small percentage.

15 So the majority was going to be controlled by Highland
16 through its control of DAF and its control of the employees
17 that worked for it. HarbourVest would be a minority investor.

18 Q Okay. And I believe you testified that the investment was
19 made in mid-November; is that right?

20 A That's correct. I think it was the 15th, may have been
21 the 17th of November.

22 Q And do you recall when in October the Terry arbitration
23 award was rendered?

24 A It was about a month before. I think it was right around
25 the 20th, the 17th to the 20th. I may be slightly wrong on

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1 each of those dates.

2 Q Okay. What is your understanding as to what happened
3 after the issuance of the award that is the basis or at least
4 one of the bases for HarbourVest's claim?

5 A I don't think there's -- I don't think there's any
6 dispute. And there certainly are judicial findings. Dondero
7 and Highland went about stripping Acis of all of its assets.
8 So, remember that Acis is not a separate standalone company,
9 in any event. It's controlled and dominated completely by
10 Highland at the time. But it did have contracts. And those
11 contracts had value.

12 So the first idea was to strip out the management contract
13 and put it into a separate vehicle, which we called HCF
14 Advisor, which Highland still owns. The second piece was to
15 strip out some valuable assets, the risk retention piece,
16 which was a loan that in essence was equity that Highland had
17 put into Acis but structured as a loan, as many of the
18 transactions we'll see down the road are, in order to deal
19 with some -- avoid taxes in any way possible. And that
20 structure, that value moved value out of Acis for the express
21 purpose of trying to run, in essence, the Highland business
22 back in Highland.

23 Remember, as I said, Acis is just a Highland business
24 moved to a separate shell. When Mr. Terry got his arbitration
25 award against Acis and was seeking to enforce it, it was

1 pretty straightforward, let's take all the assets -- Dondero
2 scheme -- let's take all the assets and move them back into
3 Highland so Terry can't get anything.

4 Q And how does that scheme relate to the HarbourVest claim,
5 to the best of your knowledge?

6 A Well, HarbourVest -- HarbourVest's position is that they
7 invested in Acis and -- and whether Acis was called Acis or
8 called Highland, it doesn't really matter; there were valuable
9 assets in the -- in the entity that they were going to be
10 investing in through the equity in these CLOs and some of the
11 debt securities in those CLOs.

12 And then the stripping out and the fraudulent conveyances
13 out of Acis caused them damages because that's what left the
14 damage to Mr. Terry.

15 The quick math on Acis, by the way, is Acis has probably
16 lost, total damages, 175 million bucks. And that's pretty
17 easy. DAF lost 50. HarbourVest lost 50. Fifteen million of
18 fees charged to HCLOF. Another five million of fees, at
19 least, incurred by Mr. Terry. Ten million that went to Mr.
20 Terry, 15 to Highland fees, another five, plus Mr. Terry's
21 settlement in this case, over eight million bucks.

22 So HarbourVest's position, which, on a factual basis, you
23 know, is problematic for the estate, is, wait a second, we
24 invested in this vehicle with Highland. That was supposed to
25 invest in Highland CLOs. They were called Acis, but they were

1 Highland CLOs. And then you went about causing tremendous
2 damage to that vehicle that we ultimately were investing in,
3 and then charge us for the pleasure.

4 Q You used the phrase earlier "OM," I believe.

5 A Offering memorandum.

6 Q Offering memorandum? Can you just explain to the Court
7 your understanding of what an offering memorandum is?

8 A Typically, under U.S. law, and foreign jurisdictions have
9 similar laws, you have to have a document that explains the
10 securities that you're selling. And it goes into extreme
11 detail about the securities and the risks related to those
12 securities.

13 And the idea is not to have a document that tells you
14 whether it's a good investment or a bad investment, but it's a
15 document that discloses to the potential investor all of the
16 risks with respect to that security or related to the
17 investment over the duration of the security. It doesn't
18 predict the future, but it's supposed to make sure that it
19 gives you a very clean view of the past and a very clean view
20 of what the facts from the past are and how they would
21 implicate the future of the investment.

22 Q And in the course of its diligence, did the Debtor have an
23 opportunity to review the offering memorandum in the context
24 of the claims that were being asserted by HarbourVest?

25 A Oh, absolutely. It was originally effectively -- it's an

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1 HCLOF offering memorandum. But as I said, HCLOF was managed
2 and controlled by Highland, and Highland originally prepared
3 it. And then, of course, in connection with -- with this
4 dispute and these claims, we reviewed it, both myself and my
5 legal team.

6 Q All right.

7 MR. MORRIS: Your Honor, the offering memorandum is
8 on the Debtor's exhibit list, and I think this is an
9 appropriate time to move into evidence Debtor's Exhibits A
10 through EE, all of which appear at Docket No. 1732.

11 THE COURT: 1732?

12 MR. MORRIS: It's the Debtor's Second Amended Witness
13 and Exhibit List.

14 THE COURT: All right. Any objection to admission of
15 A through EE?

16 MR. DRAPER: Douglas Draper. No objection, Your
17 Honor.

18 THE COURT: All right. Mr. --

19 MR. MORRIS: May I proceed?

20 THE COURT: Yeah. Mr. Wilson, did you want to
21 confirm no objection?

22 (Echoing.)

23 THE COURT: All right. Hearing no objection,
24 Debtor's A through EE are admitted.

25 (Debtor's Exhibits A through EE are received into

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1 evidence.)

2 THE COURT: Go ahead, Mr. Morris.

3 MR. MORRIS: Thank you, Your Honor. The offering
4 memorandum itself is one of the documents that we filed under
5 seal, and we did so at the request of counsel to HCLOF. But
6 HCLOF has consented to our sharing up on the screen certain
7 very limited provisions of the document, without waiving the
8 request that the agreement otherwise be maintained under seal.

9 THE COURT: All right.

10 MR. MORRIS: So may I proceed on that basis, Your
11 Honor?

12 THE COURT: You may. Uh-huh.

13 MR. MORRIS: Okay. Ms. Canty, can you please put up
14 on the screen Demonstrative Exhibit #1? Okay. Can we just --
15 is there a way to just expand that just a bit, Ms. Canty?
16 Thank you very much. And if we could just scroll it up?
17 Thank you very much. Perfect.

18 Okay. So, Your Honor, this, as the footnote says, is an
19 excerpt from the offering memorandum that can be found at
20 Debtor's Exhibit AA. Double A. And this particular portion
21 of the offering memorandum is at Page 35.

22 THE COURT: Okay.

23 BY MR. MORRIS:

24 Q Mr. Seery, have you seen this portion of the offering
25 memorandum before?

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1 A Yes, I have. But before I continue, I just -- I should
2 have checked. Are you able to hear me clearly? Am I speaking
3 too quickly or am I cutting out? I just want to make sure.
4 I'm using a different set of audio today.

5 THE COURT: All right.

6 MR. MORRIS: That's fine.

7 THE COURT: I hear you very well.

8 MR. MORRIS: Yeah.

9 THE COURT: So I think we're good right now. Thank
10 you.

11 THE WITNESS: Yeah. Thank you, Your Honor. I was
12 just checking.

13 THE COURT: Okay.

14 THE WITNESS: In response to your question, Mr.
15 Morris, yes, I have seen this before.

16 BY MR. MORRIS:

17 Q Okay. And can you -- did you form a view in doing the due
18 diligence as to the adequacy of this disclosure?

19 A Yes, I did.

20 Q Can you share your -- or share with Judge Jernigan the
21 Debtor's view as to the adequacy of this disclosure concerning
22 the litigation between Highland and Acis?

23 A With respect to the litigation between Highland and Acis,
24 or, really, between Acis, Highland, and Highland's principals
25 and Acis's principal, totally inadequate. The disclosure here

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1 is very high-level. And if there were no other litigation
2 going on, it might serve to suffice. It basically says, In
3 our business, because we invest in distressed loans, there's a
4 lot of litigation around distressed investments, and that's
5 what we have. And then it says, We've talked with the
6 investor about other things and we're -- we think that's
7 enough.

8 Q Is there anything in this portion or anywhere in the
9 offering memorandum that you're aware of that disclosed to
10 HarbourVest that in the weeks leading up to the investment
11 Highland was engaged in the fraudulent transfer of assets away
12 from Acis?

13 A No. And I apologize, because I think it's -- I've
14 conflated two provisions. This one only deals with the very
15 high-level nature of the business. It doesn't give any
16 indication that there's any material litigation going on
17 elsewhere with respect to Acis.

18 I believe there's another provision that says, We -- we
19 have talked to -- oh, here -- I'm sorry. It is here.
20 Shareholders have had an opportunity to discuss with Highland
21 to their satisfaction all litigation matters against Highland
22 and its affiliates unrelated to its distressed business.

23 That, in my opinion, is wholly inadequate.

24 Q Okay.

25 MR. MORRIS: And let's put up -- actually, let's just

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1 move on.

2 BY MR. MORRIS:

3 Q Let's go to the settlement itself.

4 MR. MORRIS: Can we put back up Demonstrative Exhibit
5 #3?

6 BY MR. MORRIS:

7 Q Mr. Seery, can you see that?

8 A Yes, I can.

9 Q Does this generally describe the net economic recovery of
10 the HarbourVest settlement based on estimated recoveries for
11 general unsecured creditors as of November 2020?

12 A As of November 2020, it does. And you alluded to this in
13 your opening, but to be clear, the numbers have shifted.
14 Costs have increased. The -- so the -- effectively, the
15 numerator, in terms of distributable value that we estimate,
16 is lower. And settlements, the denominator, have also
17 increased. So the claims against the estate that have been
18 recognized have increased. And that, that probably takes it
19 down closer, in our view, to about seventy cents distribution,
20 a number closer to nine to ten million, maybe a little bit
21 less.

22 However, there's also some additional value that we -- we
23 believe we will recover directly. There are north of \$150
24 million of intercompany notes owed by Dondero entities to
25 Highland. A number of those notes are demand notes, and we've

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1 already made demand. We'll be initiating actions next week.
2 So those are -- those value, we believe, we'll recover
3 directly from Mr. Dondero and from related entities.

4 To the extent those related entities don't have value, we
5 feel very strongly about our ability to pierce the veil and
6 reach in to Mr. Dondero. And then his assets, either his
7 personal assets or the assets that he claims are in trusts.

8 In addition, there are a significant amount of notes that
9 were extended in two -- I believe around 2017, for no
10 consideration. Those notes were demand notes, I believe, and
11 then extended it 30 years. So they have 2047 maturities.
12 Those were probably going to have to be subject to fraudulent
13 conveyance type actions or -- or some sort of sale at a very
14 discounted value because third parties wouldn't want long-
15 dated notes with Mr. Dondero as the counterparty for very much
16 money.

17 Those -- they defaulted on some of those parties, so we
18 effectively turned them into demand notes. We've accelerated,
19 and we'll be bringing actions against those entities next week
20 as well.

21 So I think (garbled) have come up, so I apologize. One
22 way of saying I think the sixteen and a half is a bit high
23 right now, based upon what we know, but the value is going to
24 be higher than our estimate a couple of weeks ago because we
25 do believe we'll be able to recover on the notes.

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1 One additional caveat, just to be fully transparent here.
2 This summary with the 16.8 doesn't include the subordinated
3 piece of this -- of this claim and our resolution. That --
4 recovery of that piece will be dependent upon the success of
5 litigations.

6 In order for the subordinated piece to get paid, all
7 general unsecured claims in Class -- Classes 7 and 8 will have
8 to be paid in full. And then -- and then the subordinated
9 class in Class 9, which we believe UBS will have a piece of,
10 and HarbourVest will have a piece of by this settlement, those
11 will be able to recover, and those will be based upon other
12 claims of action against -- primarily against related parties.

13 Q And then that last point, is that what's reflected in
14 Footnote 3 on this page?

15 A That's correct, yes.

16 Q Okay. And just for the record, there's a reduction in
17 value of \$22-1/2 million. Do you see that?

18 A Yes.

19 Q And can you just explain to the Court what that is and how
20 that value was arrived at?

21 A Yes. I may be getting slightly ahead of you, Mr. Morris.
22 But to give the Court a reflection of the transaction -- and
23 we can go into the details in a moment -- ultimately, the
24 transaction we structured we think is very fair both
25 economically to the Debtor, but there -- there is some

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1 complexity to it to satisfy some of HarbourVest's concerns
2 that they be able to effectively rescind the transaction, at
3 least from an optical perspective. Value was important, but
4 optics were as well. The twenty-two and a half is the current
5 -- actually, the November value of HCL -- the HarbourVest
6 interests in HCLOF. And that's based upon Highland's
7 evaluation of those interests.

8 So we do believe that that is a fair value as of that
9 date. It has not gone down. It hasn't gone up explosively,
10 either, but it hasn't gone down. We think that's good, real
11 value. That value is in the Acis CLOs, the equity in those
12 CLOs, which is 2 through 6, that we -- we will be working with
13 the HCLOF folks to get Mr. Terry to monetize those assets and
14 those longer-dated CLOs.

15 In addition, I think it's 85 percent of the equity in Acis
16 7 -- Acis 7 is managed by Highland -- that is also beyond its
17 reinvestment period. And in talking to the directors -- and
18 they're new directors, and I'll get to that in a minute, for
19 HCLOF -- they'll seek to push Highland, which is the
20 reorganized Highland, to monetize that asset, with due regard
21 to fair value.

22 In addition, Harbour -- HCLOF owned a significant amount
23 of the preferred or equity pieces, if you will, in the
24 Highland CLO, 1.0 CLOs. As we've talked about, those are not
25 really CLOs. Those are effectively closed-end funds with

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1 illiquid assets, primarily illiquid assets in them. We've had
2 some dispute in front of the Court about selling the liquid
3 assets in them, which we can go into it another time. Those
4 are being liquidated in the market at fair value.

5 But HCLOF also is a significant holder of those preferred
6 shares, and those directors would -- have indicated to me that
7 they would like to see those interests also monetized.

8 Q All right. Let's shift gears for a moment to talk about
9 the diligence that the Debtor did before entering into this
10 agreement. Can you just describe for the Court generally the
11 diligence that was undertaken at your direction?

12 A Well, when we first received the reply to our objection,
13 we dug into that reply and the specifics in it very
14 aggressively. So we reviewed all of the underlying documents
15 related to the original transaction. We discussed with
16 counsel the legal basis for the HarbourVest claims. We
17 interviewed our own HCMLP employees who were involved in the
18 transaction and tested their recollection, specifically around
19 who dealt with HarbourVest, who had the discussions with
20 HarbourVest, what was disclosed to HarbourVest with respect to
21 the Terry dispute and the Acis litigation.

22 We also had done, as I think the Court is well aware from
23 prior 9019 testimony, extensive work around the transfers and
24 the issues related to Acis. So we were familiar with their
25 impact on HCLOF.

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1 We also did extensive work valuing the remaining HCLOF
2 interests to get a good feel of not only how much HarbourVest
3 originally invested, but how much they actually lost in this
4 transaction. And as I said, their original investment was
5 around, in total, in two tranches, about \$80 million, of which
6 they got about \$5 million back, and they've lost \$22 million.
7 So it -- I mean, remaining with \$22 million. So they've lost,
8 you know, in excess of \$50 million.

9 Q Do you recall whether the Debtor reviewed and analyzed all
10 of the documents that were cited in HarbourVest's response to
11 the Debtor's objection to the HarbourVest proofs of claim?

12 A Yeah. I think -- I forget, to be honest, which -- exactly
13 what documents were in there. But we went through their
14 objection with a fine-toothed comb, not only with respect to
15 the issues related to the Acis case, but also their references
16 to Guernsey law, other U.S. law, any of the documents between
17 the parties. And obviously, as I mentioned before, the
18 offering memorandum.

19 MR. MORRIS: Your Honor, I would just note for the
20 record that Debtor's Exhibits I through X are all of the
21 documents that are cited in HarbourVest's response to the
22 Debtor's objection to the HarbourVest proofs of claim, and
23 those are the documents that Mr. Seery just referred to.

24 THE COURT: All right.

25 MR. MORRIS: Just, they're in evidence now, and I

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1 just wanted the Court to understand why they're in evidence.

2 THE COURT: Okay. Thank you.

3 MR. MORRIS: You're welcome.

4 BY MR. MORRIS:

5 Q Let's talk about the Debtor and whether or not it had or
6 has any viable defenses. Did the Debtor form any views as to
7 whether or not it had any defenses to the HarbourVest claims?

8 A Yes, we did.

9 Q Can you describe for the Court the defenses that were
10 reviewed and analyzed by the Debtor?

11 A Yeah. I think we -- we had very significant defenses.
12 So, first and foremost, with respect to the original proof of
13 claim, as I mentioned earlier, it alluded to the expenses and
14 the overcharge. And I think with respect to the 15 million of
15 fees that were charged to HCLOF by Highland, we didn't have a
16 lot of defenses to that claim.

17 It's pretty clear, by any fair view of the Acis case, that
18 HCLOF, as the investor in the Acis CLOs and the Highland CLOs,
19 had no real responsibility for fighting with Acis and Josh
20 Terry and shouldn't have been charged those fees. I don't --
21 I don't think there's a legitimate investor that would
22 actually think that that was an appropriate amount to be
23 charged to a fund.

24 However, the claim was not as broad -- the proof of claim
25 was not as fulsome in terms of discussing and only vaguely

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1 referred to other damages. So we did -- we did, as a
2 threshold matter, think about whether we could argue that it
3 was time-barred because they had not met their obligations to
4 fully disclose under the proof of claim.

5 Secondly, we considered the defenses to the overall claim
6 of fraudulent inducement. Our perspective was that if we
7 could stop the claim of fraudulent inducement, the damages
8 would likely be limited to the 15 and maybe some -- some other
9 damages. With respect to the 15, again, the problem that we
10 had when we got past -- past motions for summary judgment is
11 the factual predicate for our defense was going to be that we
12 divulged these things to HarbourVest and that they did not
13 reasonably -- it was -- reasonably rely on some failure to
14 divulge because they're a sophisticated investor.

15 The problem with that defense is that our witnesses, which
16 really would have primarily been Mr. Dondero and Mr.
17 Ellington, and one other employee who runs the CLO business,
18 Mr. Covitz, would not be pretty good. They've been -- two of
19 them have been in front of this Court and they're not viewed
20 favorably and their testimony would be challenged and
21 potentially suspect.

22 So that gave us a real focus on trying to make sure that
23 we could, if we had to litigate, that we would litigate around
24 the fraudulent inducement.

25 As I said, reasonable reliance, what was disclosed, lack

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1 of digging into the public record, because you don't have to
2 go far on Google to find "fraud" within two words of
3 "Highland," and the tremendous, you know, litigious nature of
4 Highland. You know, even at that point, when this investment
5 was made, aside from Mr. Terry's arbitration, which by that
6 point, at least by the time (inaudible) was public, there was,
7 you know, significant public disclosure around the Credit
8 Strat and the litigation, the Crusader litigation, the UBS
9 litigation, the, gosh knows, the Daugherty litigation.

10 So our defense was going to be that you should have
11 figured this out, you're a sophisticated investor, and you
12 should have been able to figure out that there was significant
13 risk that, with respect to Mr. Terry, that Mr. Dondero would
14 not stop litigating and that those costs would put significant
15 risk on the investment.

16 The problem with that, as I mentioned earlier, is that the
17 OM is wholly deficient. If you have a typical risk factor in
18 the offering memorandum, you would have disclosed that there
19 was a litigation with Mr. Terry, a former partner in the
20 business, and that the Debtor had no intention of settling it.
21 There was no intention of settling. That litigation would go
22 on. It could go on for years and it could result in
23 bankruptcy or attachments and other risks to the business, and
24 that the investor should be fully aware that the Offeror does
25 not intend to be involved in any -- or the manager, in any

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1 settlement with Mr. Terry, and the fact it undermined the
2 investment. That wasn't there.

3 But that was our preliminary focus, to try to stop fraud
4 in the inducement. And then we -- we had specific facts
5 related to that. You know, once they knew about the
6 bankruptcy in HarbourVest of -- I'm sorry, of Acis,
7 HarbourVest made a second funding, which was there was a -- it
8 was an initial \$75 million draw, and then a second, I believe,
9 about a \$5 million draw, which was in -- I believe in
10 February. And they made it without -- without objection, and
11 that was after the commencement of the bankruptcy.

12 In addition, they were -- they were active in the
13 bankruptcy, so the -- some of the things that happened in the
14 bankruptcy, there were many opportunities to settle that case,
15 from our examination, all of which were turned down to -- by
16 Mr. Dondero. But you don't see HarbourVest pounding the table
17 to settle, either, either with respect to the Oaktree
18 transaction or any other transaction.

19 Now, HarbourVest's defense to that is, well, we were
20 taking advice and all of our information from Highland, and we
21 were getting that information directly from senior folks at
22 Highland why -- what the value was and why we shouldn't do
23 those things. We thought that that would mitigate some of the
24 arguments that -- some of the damages that we might have, I'm
25 sorry, if we -- if we lost.

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1 But the focus at that point, you know, our legal strategy,
2 was can we stop HarbourVest at the very forefront to say,
3 You've got to come into the factual realm and get out of the
4 fraud in the inducement realm. And then the defenses and the
5 exculpations and the liability limitations in the documents
6 would also come into play.

7 So that -- those are some of the defenses that we focused
8 on and our analytical thinking around them.

9 Q So, if the Debtor had viable defenses, why is it settling?

10 A Well, this is a significant claim. And we -- we looked at
11 it with respect to both the impact on the case, but, really,
12 the merits of the claim.

13 As I said, there's really little dispute that the legal
14 fees should not have been charged to HarbourVest. We think
15 based upon the testimony in Acis, the suspect credibility of
16 those who would have been our witnesses, and the experience in
17 Acis that the Court has had in terms of the completely hell-
18 bent on litigation, it would be hard for anyone to justifiably
19 defend those fees being charged. So, as an initial matter, we
20 had exposure there.

21 In addition, if HarbourVest got by our defense of -- was
22 able, for example, to claim fraud in the inducement, then we
23 were open to significant damages.

24 We really didn't put much value, frankly, on the RICO part
25 of it. We think that that's waved around often to show treble

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1 damages. Although in this case certainly somebody could lay
2 out the predicate acts and put forth a RICO-type argument, we
3 just didn't think that that had real merit in this commercial
4 dispute, even with a fraud claim.

5 But even without the trebling of the damages, there's no
6 dispute that HarbourVest lost more than \$50 million in this
7 investment. You know, we -- we thought about that risk as
8 well.

9 In addition, because the case would really be fact-based,
10 even if we had a high degree of confidence based upon our
11 discussions with our employees and the factual testimony, it
12 was going to be expensive to litigate this case, and time-
13 consuming.

14 And so we looked at the economic value, the potential
15 risks, and the actual value that we were giving up, and found
16 this to be an extremely, extremely reasonable settlement.

17 Importantly, and I think what drove it, you -- one of --
18 one of the things that drove it is another one of our defenses
19 on why, notwithstanding their -- what they held out as
20 meritorious claims, I don't think HarbourVest really wanted to
21 publicly litigate this claim. And we were aggressive in our
22 discussions with HarbourVest of how we would litigate it,
23 which would be quite publicly.

24 Now, that may or may not be fair, but that does put risk
25 on the counterparty. And so I think that helped drive the

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1 settlement.

2 In addition, the structure of the settlement we think is
3 extremely favorable to the Debtor and to the estate because,
4 rather than taking the full claim and putting it into a senior
5 unsecured position, we have bifurcated it. We did think about
6 whether this was a claim that could be subordinated under 510.
7 There won't be any arguments, I would be surprised if there's
8 arguments today that we didn't actually give to the Highland
9 employees who have given them to Mr. Dondero's respective
10 counsel.

11 We did structure it in a way that we thought gave
12 HarbourVest the opportunity to effectively claim a rescission,
13 even though that's not really what it is, and then be able to
14 claim that their recovery is based on the bankruptcy, which it
15 is, but not really dilute all the other stakeholders in the
16 case.

17 (Pause.)

18 THE COURT: Mr. Morris? Anything else?

19 MR. MORRIS: I can hear you, Your Honor.

20 THE COURT: Okay.

21 MR. MORRIS: I can hear you.

22 THE COURT: Okay. Now can you --

23 MR. MORRIS: I got cut off from Mr. Seery for a
24 moment.

25 THE COURT: Okay.

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1 BY MR. MORRIS:

2 Q Okay. I appreciate that. Are you done giving the
3 Debtor's basis for entering into this settlement, Mr. Seery,
4 if you can hear me?

5 A I think so, but I think as the Court has probably seen, I
6 can go on.

7 Q Yes.

8 A So I will try to be -- I'll try to be more concise. But
9 this was a -- this was a difficult settlement. We felt good
10 about our defenses. Felt that we could -- we could try them.
11 But it would be extremely expensive, time-consuming, and there
12 would be a lot of risk. And settling at a level which we
13 believe is actually below the damages that were clearly caused
14 only by the fees was a -- was a -- is a -- is a very
15 reasonable settlement.

16 Q Okay. Let's just talk about the process by which we got
17 to the settlement. Do you recall generally when the
18 settlement negotiations have -- were commenced?

19 A I believe it was -- was late summer, early -- early fall.

20 Q Okay. Before I move on, I just want to go back to the
21 Acis matter that you were talking about, one last issue. Do
22 you know how, if at all, the injunction that was entered in
23 the Acis bankruptcy impacted or related to the HarbourVest
24 claims?

25 A Yeah. I -- yes, I do. And I believe it -- it did. I

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1 think there's an argument, and we analyzed it thoroughly, that
2 the injunction effectively caused a lot of the damages.
3 Because if you look at the values of the equity that
4 HarbourVest had, the -- and HCLOF had in the CLOs, it went
5 down dramatically after the Trustee in the Acis case took over
6 and then subsequently, when the case was reorganized and Mr.
7 Terry took over, you know, with Brigade as the sub-advisor.

8 Now, that would -- you know, we would -- we could
9 certainly attempt to throw, in our defense, the causation at
10 Mr. Terry's feet or at Mr. Phelan's feet. HarbourVest's
11 retort is that none of this would have occurred but for the
12 burn-it-down litigation that Mr. Dondero engaged in with
13 Highland.

14 In addition, in Mr. Terry's defense, you know, he did try
15 multiple times with HCLOF, tried to petition, if you will, the
16 HCLOF entity to -- and directors, former directors, to reset
17 the CLOs to make them more economically viable, based upon the
18 current level of asset returns versus the debt costs in the
19 CLOs. And that was rejected by the HCLOF and the Debtor as
20 the controlling party of HCLOF. So, we thought about those
21 risks.

22 You know, similarly, the economic values in Acis 7 went
23 down pretty significantly from that date as well. So I think
24 there's -- there are some defenses, but that's really Mr.
25 Terry's issue, not our issue. So we thought about those

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1 issues, we analyzed them, and we certainly did all the work
2 around month-to-month reductions in NAVs and how different
3 events in the Acis case might have -- might have caused those
4 and was that some sort of break from the original
5 transgression that HarbourVest claims, which was the
6 fraudulent inducement.

7 Q Do you recall that in November HarbourVest's motion under
8 3018 was scheduled to be heard?

9 A Yes.

10 Q And can you just tell the Court your understanding of what
11 the 3018 motion was about?

12 A Well, the 3018 motion was going to be on voting. And we
13 took the view that it really was not -- it shouldn't have been
14 that big an issue and HarbourVest should have been content
15 with just taking their actual losses of roughly a \$50-\$60
16 million claim for voting purposes and then we would move on.

17 HarbourVest was very insistent that they have a \$300
18 million claim, because they took the position -- and with
19 extensive documentation; not only the pleadings they filed,
20 but also detailed decks that were prepared by their counsel,
21 which they had presented to us on the merits of their claim --
22 that they were going to litigate for -- the 3018 and for the
23 full \$300 million value.

24 And that became the genesis, if you will, of the
25 negotiations to settle.

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1 So, we started talking about the 3018. It was very
2 contentious. My apologies to Ms. Weisgerber and her counsel,
3 her partners, because it was a significant and contentious
4 negotiating call. But the reasons for that I think were that
5 -- their insistence on litigating the 3018 and our view that
6 this was just, you know, another -- another of a series of
7 delays and costs in this case that we really were hoping to
8 avoid.

9 That led to Mr. Pugatch and I stepping away from counsel,
10 no offense to counsel, you know, ours and his, to begin
11 negotiations around the potential for a settlement. First, it
12 started with a 3018, and then, you know, argued that we would,
13 if we got past the 3018, we were going to litigate this,
14 because we effectively had -- thought we could get everyone
15 else done at -- in and around that time. And I think we were
16 also probably a little bit optimistic about UBS at that time
17 and the mediation, which subsequently we have settled. But
18 that was the genesis of those settlements.

19 Q And how did the structure, how did the Debtor and
20 HarbourVest derive at the structure whereby there is a general
21 unsecured claim, there is a subordinated piece, and there's
22 the takeback of the HCLOF interest?

23 A Well, as I outlined, we -- we aggressively set forth our
24 various defenses. Their position was that they -- they should
25 never have been in this transaction before. And they --

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1 HarbourVest is, in essence, a fund of funds, and they have
2 investors, and it certainly wouldn't be their, I'm sure, the
3 best-performing asset in their portfolio, to have made this
4 investment and lost \$50 million over this period of time. So
5 they felt strongly that they should never have been in this
6 investment, and but for the failure to disclose and the
7 improper disclosures, they would not have been in this
8 investment.

9 So, optically, getting out of it was important to them,
10 and that led to our idea and construction of a subordinated
11 claim and the transfer of the HCLOF interests to the estate.

12 Importantly, the HCLOF interests, as I mentioned, are --
13 the investments are in the Acis CLOs controlled by Acis and
14 Mr. Terry. The reorganized Acis. As well as the 1.0 CLOs and
15 the Acis 7.

16 So we were keenly focused on, if we were going to get that
17 interest, would we then have the majority control in HCLOF,
18 which we will, and would we be able to drive the recoveries,
19 as opposed to what Highland typically does in these
20 investments is use other people's money, drive down the value,
21 and then try to buy back the interest on the cheap.

22 Q Just in terms of timing, because I think there was a
23 suggestion in one of the openings that there was something
24 untoward about the timing here: At the time the liquidation
25 analysis was prepared on November 24th, had the Debtor reached

1 any agreement in principle with HarbourVest?

2 A If we had, it would have been reflected, so I don't -- I
3 don't think we were agreed by then. I don't recall the
4 specific dates, but if we had, it would have -- it would have
5 been reflected.

6 Q If I can refresh your recollection that the motion was
7 filed on December 24th, does that help form your understanding
8 or refresh your recollection that there was no agreement in
9 principle on November 24th?

10 A Yeah. Well, I'm quite sure there was no agreement in
11 principle or we would have reflected it minimally by a
12 footnote. There's -- there's no chance. It's a material
13 reduction in the claims pool that we were previously telling
14 people that, at least for purposes of distribution, like UBS
15 and a couple others we said we thought we would get to zero
16 on. So we didn't calculate in that amount. So I'm quite sure
17 we didn't have a deal when we filed the disclosure statement.

18 In terms of the timing, anyone who's done this business
19 for any degree of time knows that the crucible of bankruptcy
20 brings people to the settlement when they see something
21 happening in the case, and not before. I think HarbourVest
22 looked at our -- this is my supposition -- HarbourVest looked
23 at our plan, our ability to get this done, our settlement with
24 Redeemer, our settlement with Mr. Terry and Acis, and saw that
25 this plan was coming together, and if they didn't think about

1 the settlement, they were going to think about not only the
2 risks that we laid forth for them with respect our defenses,
3 but also the opportunity to litigate with the Claimant Trustee
4 over a long period of time, which couldn't have been
5 particularly appetizing.

6 Q Can you describe for the Court the role played by the
7 independent board of Strand, the general partner of the
8 Debtor, in analyzing and participating in the approval
9 process?

10 A Yes. I think, as the Court is aware and I've testified
11 before, Mr. Russell Nelms and Mr. John Dubel are fellow
12 independent directors with me, appointed pursuant to the Court
13 order. They are kept abreast of every detail, and -- along
14 the way, not just in a summary form at the end. We have
15 reviewed and analyzed collectively each of the issues. Mr.
16 Dubel has extensive experience in these types of litigation
17 matters. Obviously, Mr. Nelms, from his -- both his practice
18 and his time on the bench, has a keen insight into how to
19 resolve and what the risks and benefits are from settling
20 litigation. So I consult them every step of the way.

21 Q And as part of this process, did the Debtor reach out to
22 the directors of HCLOF?

23 A Yes, we did. So, we reached out and we've had several
24 conversations on video chats with the directors. The
25 directors of HCLOF are two new gentlemen, Mr. Richard Boleat

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1 and Mr. Dicky Burwood. They are extremely professional. They
2 are exceptionally well-informed. They are truly careful, and
3 I would say very experienced professional not only directors,
4 but experienced in -- in these matters, both in respect of
5 structured finance as well as these types of vehicles and
6 litigation.

7 They were appointed by the old directors, Scott and
8 Bestwick, and they have been in control. They have outside
9 counsel, which is King & Spalding in the U.S. They have
10 Guernsey counsel. They have accountants and professional
11 advisors, and are being, in my opinion, exceptionally careful.
12 I've got -- very quickly developed a lot of respect for them,
13 and we consulted with them on this settlement and how it would
14 work.

15 They've been very clear that they represent HCLOF and they
16 work for the benefit of the equity, whomever owns it, and
17 taking a view that they would like to see these assets
18 monetized swiftly, with due regard to value, for the benefit
19 of the equity.

20 Q And is it your understanding that the directors of HCLOF
21 approved of this transaction?

22 A They -- I don't know that their approval was required.
23 It's really -- there are a number of hoops to jump through
24 under the documentation, including opinion of outside counsel
25 that we received from WilmerHale in terms of the effectiveness

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1 of the transfer under the documents. We had a negotiation
2 with -- with those directors, and making sure that we did
3 everything correct -- correctly, excuse me -- with respect to
4 the requirements for the transfer under the documents. And
5 they've indicated their support and acknowledgement that we're
6 doing it correctly.

7 I don't know if it's fair to say they approved it. I'd
8 just have to go check the documents. But they certainly
9 support it. And I think they generally support our position
10 with respect to how to move forward with the assets.

11 Q I appreciate that. I guess I meant approval with a small
12 a and not a capital A.

13 You mentioned WilmerHale. Who do they represent in all of
14 this?

15 A WilmerHale is the Debtor's outside corporate counsel, in
16 particular with respect to the fund issues that we don't
17 handle in-house. We have significant support for fund issues
18 from the expertise of Mr. Surgent, who's been the CCO, and he
19 is also a lawyer, with respect to, you know, some of the
20 difficult fund issues that Highland has. But when we use
21 outside counsel, we use WilmerHale for that, and they've been
22 -- they've been exceptional.

23 Q Okay. Just the last two points that were made in Mr.
24 Dondero's objection, I believe. Did the Debtor overpay in
25 this settlement in order to gain the support of HarbourVest in

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1 connection with its -- with the Debtor's attempt to get its
2 plan confirmed?

3 A Not in any way. My -- I believe the settlement is
4 extremely reasonable. As I testified, it's -- it's less than
5 the -- the actual value going out, depending on unless there's
6 successful litigation, and there well could be, is less than
7 on a pro forma basis the fees that were taken and charged to
8 HCLOF. We didn't do this for votes. We will have Class 2,
9 Class 7, Class 8, and Class 9. So I don't think that's a --
10 there's no vote purchasing, I think you called it. No, not at
11 all.

12 Q Yeah. Well, on that topic, I think the phrase that was
13 used was gerrymandering. Are you aware of the argument that's
14 been made that the subordinated claim was dropped in there in
15 order to gerrymander a positive vote for the impaired class of
16 Class 9, I believe?

17 A In a word, I would say that's preposterous. The -- as I
18 said, we have a number of classes that will vote for the plan.
19 The plan is -- the plan is a monetization plan. And if -- if
20 the creditors determine that they don't want to pursue this
21 plan, we'll go forward with another -- we'll try to get
22 another plan. We tried to have a grand bargain plan. We
23 tried to have a pot plan, as I've testified previously. I'm
24 quite certain that I've done more work on that than anyone
25 else, including Mr. Dondero and anybody who works for him.

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1 And he hasn't been willing to do that.

2 This is a -- this is a plan that's come together. We
3 think it's going to be in the best interests of the estate.
4 That'll be confirmation next week. Or two weeks, I guess.
5 But I don't see how this is any way related -- this settlement
6 is not any way related to the voting on that -- on that -- on
7 that plan.

8 Q Just to put the finest point on it, is the Debtor relying
9 on Class 9 to be the impaired consenting class?

10 A No. I think -- I think what I've -- as I said, I believe
11 we already have the votes in Class -- I think it's 2 or 3, 7,
12 8, and -- and 9 will vote in favor as well. So that won't be
13 an issue.

14 MR. MORRIS: Your Honor, I have no further questions
15 of Mr. Seery.

16 THE COURT: All right. Pass the witness. I'll ask
17 HarbourVest counsel first: Do you have any questions of Mr.
18 Seery?

19 MS. WEISGERBER: No, Your Honor.

20 THE COURT: All right. Thank you.

21 What about cross-examination? Mr. Dondero's counsel?

22 CROSS-EXAMINATION

23 BY MR. WILSON:

24 Q Mr. Seery, how are you doing today?

25 A I'm well, thank you.

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1 Q I'm John Wilson, and I represent Jim Dondero. I have a
2 few questions for you today.

3 Now, the HarbourVest proof of claims were filed on April
4 8th, 2020; is that your recollection?

5 A I believe that's correct. I don't recall the specific
6 date.

7 Q Okay. And do you know when you first became aware of the
8 HarbourVest claims?

9 A I believe it was early in the summer when we filed the
10 omnibus objection. It may have been in late spring, shortly
11 after that. I don't recall the specific date of the filing.

12 Q And before the time of the filing of the omnibus
13 objection, did Highland educate itself regarding the
14 HarbourVest proof of claims?

15 A I'm sorry, could you say that again? I didn't quite
16 understand it.

17 Q Before the omnibus objection was filed, did HarbourVest --
18 I'm sorry, did Highland educate itself on the HarbourVest
19 proof of claims?

20 A Not especially, no.

21 Q Okay. And -- but at some point, Highland did investigate
22 those proofs of claim, correct?

23 A That's correct.

24 Q And when would you -- when do you recall that that
25 investigation began?

1 A I don't recall the date, but the triggering event was
2 HarbourVest's response to our omnibus objection.

3 Q Okay. And that would have been filed September 11th of
4 2020?

5 A I'll take your representation. I don't -- I don't recall
6 the specific date.

7 Q Okay. And so when you began to investigate the
8 HarbourVest claims, what was your initial reaction?

9 A My initial reaction was that the -- the larger claims that
10 they were asserting -- the fraud in the inducement, the RICO
11 -- that those claims were, in my view, attorney-made and that
12 when we dug in and did the work, we saw that HarbourVest
13 clearly lost north of \$50 million on the investment. We had
14 just started to uncover the fee issue and saw the risk we had
15 there.

16 But I thought the bulk of those claims were attorney-made.
17 Clever, but attorney-made, as opposed to what I would think
18 are more legitimate. And so we started to develop our
19 defenses around that.

20 Q And was your initial reaction that the HarbourVest claims
21 were largely worthless?

22 A I think with respect to the claim around the fees, I
23 believed there was significant risk. With respect to the
24 other claims, I thought our defenses would make them
25 worthless, yes.

1 Q And did you ever represent to any party that the
2 HarbourVest claim was worth, at most, \$5 million?

3 A I think I represented often, including to HarbourVest,
4 that it was worth nothing. I don't recall if I specifically
5 said \$5 million. \$5 million would have been a nominal amount
6 to -- which is litigation costs. So it may -- it may have
7 been in my models that I put in that as a settlement amount,
8 but I -- I thought that there were valid and good defenses to
9 those larger claims.

10 Q And you recognize that HarbourVest was a large,
11 sophisticated investor, correct?

12 A Yes. I think they manage north of -- right around a
13 hundred billion dollars.

14 Q And you recognize that HarbourVest routinely structured
15 complex customized investments, correct?

16 A I believe that -- I don't know the intricate part of their
17 businesses, but as a fund of funds who does creative
18 investments, I think that they do do quite a bit of that.
19 This, I believe, was their first investment in the CLO space.

20 Q And it was not -- or I should say, you did not believe
21 that HarbourVest was simply a passive investor in HCLOF,
22 correct?

23 A I don't think that that's true, no.

24 Q You don't -- you don't believe that you denied their claim
25 to be a passive investor?

1 A Oh, I think -- I'm sure that in defense of their claims I
2 would argue that they were -- they were more than a passive
3 investor. But it was pretty clear when you look at the
4 structure of what they invested that there was an intent that
5 they be passive on their part. They didn't take a majority
6 interest.

7 In fact, Highland made it clear in the structure of the
8 deal that they couldn't -- it would be hard for them to get a
9 majority interest because Highland entities would control that
10 and Dondero-controlled entities or individuals would control
11 the majority.

12 I think that they -- they had hoped to be a passive
13 investor.

14 Q But was it not your position that HarbourVest was actually
15 an active, involved investor?

16 A I think our defense was going to be that they knew exactly
17 what was going on, that they participated, that they were
18 active, and that, indeed, that they were in and around some of
19 the subsequent issues in the Acis case.

20 Q And you understood that HarbourVest played a material role
21 in the various outcomes in the Acis bankruptcy case, correct?

22 A I don't believe that to be correct, no.

23 Q Have you ever made that representation to anyone before?

24 A Not -- not that I recall.

25 Q Well, do you recall giving statements to a reporter named

1 Syed Khaderi?

2 A I've never spoken to a reporter named Syed Khaderi in my
3 life.

4 Q Well, did you participate in the preparation of statements
5 to be given to Syed Khaderi?

6 A I've never heard of Syed Khaderi, nor have I participated
7 in any preparation of statements. I don't know who that is.

8 MR. WILSON: All right. I'm going to have Bryan
9 Assink put on the screen a document.

10 And Bryan, can you go to Page 7? Bottom of -- the top of
11 Page 7. Well, actually, before you do that, go to the very
12 top of the document.

13 BY MR. WILSON:

14 Q Now, Mr. Seery, are you familiar with Lucy Bannon?

15 A Yes.

16 Q And who is Lucy Bannon?

17 A She is the Highland public relations person.

18 MR. WILSON: Okay. Now go back to Page 7.

19 BY MR. WILSON:

20 Q Now, do you -- do you see on your screen an email of
21 September 14th from Syed Khaderi that says, Hi, Lucy, how are
22 you?

23 A Yes.

24 Q Have you seen this email before?

25 A Not that I recall, no.

1 Q All right. It continues on that, I saw the filing on
2 Friday about HarbourVest claims against Highland for a CLO
3 investment, and I'm looking to put out a report tomorrow
4 morning London time. Ahead of that, I wanted to check if
5 Highland would like to comment on the matter.

6 MR. MORRIS: Your Honor, this is -- the Debtor
7 respectfully objects. A, this document is not in evidence.
8 B, it's rank hearsay.

9 THE COURT: Response, Mr. Wilson?

10 MR. WILSON: Your Honor, I am attempting to
11 authenticate this document, but I'm using it in rebuttal to
12 the testimony that Mr. Seery just offered.

13 THE COURT: All right. I'll allow it. Overrule the
14 objection.

15 MR. WILSON: All right. Thank you, Your Honor.

16 BY MR. WILSON:

17 Q All right. Now, if we -- and oh, that September 14th
18 date, that was three days after the September 11th date that
19 we discussed was the date that HarbourVest filed its response
20 to the omnibus objection, correct?

21 A Yes. If that's the date that they filed it, then I -- if
22 you're representing that, I concede that the 14th is three
23 days after the 11th.

24 Q All right. And if you go back to the first page of this,
25 it looks like, on the following day, Lucy Bannon sends an

1 email to you, and is that your email address,
2 jpseeryjr@gmail.com?

3 A That's correct, yes.

4 Q And do you recall receiving this email from Lucy Bannon?

5 MR. MORRIS: Your Honor, I renew my objection that
6 this is hearsay. He's not rebutting anything that Mr. Seery
7 testified to. He testified that he'd never heard of the
8 gentleman at the bottom of the document. There's nothing in
9 this document that rebuts Mr. Seery's testimony at all.

10 THE COURT: Response, Mr. Wilson?

11 MR. WILSON: Well, I'm not -- I'm not trying to rebut
12 his statement that he hadn't -- that he hadn't heard of Syed
13 Khaderi. My rebuttal is attempted to -- attempting to show
14 that he has made various statements that he denied.

15 THE COURT: I'll overrule the objection.

16 BY MR. WILSON:

17 Q All right. So, back to this exhibit, Mr. Seery. You
18 recall receiving this email from Lucy Bannon on Tuesday,
19 September 15, 2020?

20 A Not specifically. But to be clear, I recall talking to
21 Lucy Bannon about the HCMLP dispute with HarbourVest.

22 Q Okay. And --

23 MR. WILSON: Bryan, can you go down to the next page?
24 Scroll down to where -- the James Seery email.

25 BY MR. WILSON:

Seery - Cross

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1 Q Do you see this email on your screen that's dated
2 September 15, 2020 at 10:33 p.m.?

3 A Yes, I do.

4 Q And do you recall sending this email to Lucy?

5 A Not specifically, no.

6 Q Well, do you deny that you sent this email to Lucy?

7 A It appears to be my email.

8 MR. WILSON: Your Honor, we would move to admit this
9 document into evidence as Dondero Exhibit Letter N.

10 THE COURT: Any objections?

11 MR. MORRIS: I would consent to the admission of Mr.
12 Seery's email, but the balance of it ought to be excluded as
13 hearsay.

14 THE COURT: What about that?

15 MR. WILSON: Well, Your Honor, I think that this
16 document -- and I'll get into this in a little more detail in
17 a second -- but I think this document is a combination of the
18 work product of Lucy Bannon and Mr. Seery in preparing a
19 response for the reporter who requested comment from Highland.

20 THE COURT: Okay. I --

21 MR. MORRIS: Your Honor, um, --

22 THE COURT: Go ahead.

23 MR. MORRIS: I just -- I do question how they got
24 this document, but that's for another day. That's number one.
25 Number two, in addition to the hearsay argument, I just --

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1 relevance grounds.

2 THE COURT: Okay. I'll allow the portion that is the
3 communication of Seery, that portion of Exhibit N. All right?

4 MR. WILSON: Okay. With due -- thank you, Your
5 Honor. With due respect, I -- to use that portion, I need to
6 refer to the portion below it, because he says, Good to submit
7 with your final edit/revisions. And so we need to know what
8 those final edit/revisions are, which are contained in the
9 email directly below that on the document that was four
10 minutes earlier in time.

11 THE COURT: All right. Fair enough. That'll be
12 allowed.

13 MR. WILSON: All right. Thank you, Your Honor.

14 (James Dondero's Exhibit N is received into evidence as
15 specified.)

16 MR. WILSON: So, Bryan, now can you scroll to the
17 next page? Oh, actually, let's just -- let's just stop at the
18 top -- at the bottom of the page. What's this statement?

19 BY MR. WILSON:

20 Q So, to be clear, Mr. Seery, when -- in response to Mr.
21 Khaderi's request for information and comment, you prepared
22 actually two responses, and one of those was a statement on
23 the record attributed to a spokesperson for HCMLP or something
24 along those lines. And then --

25 MR. WILSON: Can you scroll down to that next page?

1 BY MR. WILSON:

2 Q And this says -- I think part of this got cut off for some
3 reason, but it looks like the official statement is in
4 quotation marks. It says, "We dispute the allegations made in
5 the filing and believe the underlying claims are invalid and
6 will be found to be without merit. Our focus continues to be
7 treating all valid claims in a transparent, orderly, and
8 equitable manner, and vigorously disputing meritless in the
9 court. That focus will assure that HCMLP's reorganization
10 process -- progress is towards an efficient and equitable
11 resolution."

12 And then below that there's another section of this email
13 that says, Background/Clarification, Not for Attribution. And
14 do you know the purpose of this second section of the
15 response?

16 A Do I know the purpose of that? Yes.

17 Q And what would that purpose be?

18 A Ms. Bannon was speaking on background to reporters. As I
19 said earlier, I've -- I never heard of the gentleman from
20 London. If he's at the bottom of the email, I didn't pay any
21 mind, never heard of him. Nor have I heard it since. Ms.
22 Bannon didn't ever reference the specific person.

23 But she is the public relations person. So, as I
24 testified earlier, she does communicate with the press. And
25 as I previously testified when Mr. Morris questioned me, one

1 of our tactics and our defenses for HarbourVest was going to
2 be that we were going to be very public and aggressive about
3 the investment and it would have a negative impact or negative
4 perspective for viewers, in our opinion, about HarbourVest's
5 investment.

6 Q All right. Well, look with me in the middle of that
7 paragraph right after the closed parenthetical, where it says,
8 "But it's important to note the background of HarbourVest's
9 active and deep involvement in the investment of which it now
10 complains."

11 And so it was your position that HarbourVest had an active
12 and deep involvement in the investment, correct?

13 A No. I don't think that's correct. Ms. Bannon prepared
14 the statement, it was a litigation defense on background, and
15 that's our -- that was our position for this purpose. It was
16 not my view that they were active and deeply involved. They
17 were certainly involved. There's no doubt about it. But they
18 got all their information, in our estimation and our research,
19 from Highland.

20 Q But in any event, you would agree with me that four
21 minutes after receiving this email, you approved this
22 statement to go out to the reporter, correct?

23 A No, that's not correct. That's -- this portion is on
24 background. That statement doesn't go out. The previous
25 statement was the official statement. This is the background

1 discussion that she would have. So, no, she was not
2 authorized in any way whatsoever to send that out. She was
3 authorized to have conversations with those general facts.

4 MR. WILSON: Okay. Bryan, go to the top, or the
5 bottom of the page immediately preceding that. That's it.
6 Yes, that's it right there.

7 BY MR. WILSON:

8 Q Now, you'll see that this email from Lucy Bannon on
9 September 15, 2020 at 10:29 p.m. starts off, "Jim, let me know
10 what you think of the below. And, again, the first would be
11 on the record and the second will be sent for information
12 purposes to ensure accuracy, not for attribution."

13 So the intent was that this -- that this entire statement
14 be sent to the reporter, correct?

15 A I don't believe that's correct. I think when she goes on
16 background she doesn't send them a written doc. It's got to
17 be clear to the reporter, at least my understanding is that
18 what on background means -- I've been involved with this
19 before -- is that typically that's done orally. I don't know
20 if she's done it in a written statement before. I have never
21 seen that done in a written statement before. You give the
22 official statement and then you walk the reporter through your
23 other views on background. And you're not quoted. And it's
24 usually attributed to a source with knowledge.

25 Q Okay. We'll come back to that in a minute. The next

1 sentence after the one I just read to you --

2 MR. WILSON: Go back to where we were on the
3 background.

4 BY MR. WILSON:

5 Q Now, we just read you the sentence that starts with, "Then
6 it's important." The following sentence says, "HarbourVest
7 was not simply invested in HCLOF as an ignorant,
8 unsophisticated, passive investor, but was an active and
9 informed participant in the inception of its investment
10 through all of the Acis bankruptcy proceedings, and
11 HarbourVest played a material role in various outcomes related
12 to that case and its impact on HCLOF."

13 And is it -- did you not just tell me before we
14 investigated this document that HarbourVest did not play a
15 material role in the various outcomes of the Acis bankruptcy?

16 A I don't know exactly what I said, but I think that's
17 correct, after we'd done the research on it, yeah.

18 Q But you took the position in this email that you approved
19 to go out to a reporter that says that -- that HarbourVest was
20 an active and informed participant in the inception of -- of
21 its investment through all of the Acis bankruptcy proceedings
22 and played a material role in various outcomes related to that
23 case and its impact on HCLOF. Can we agree with that?

24 A Yes.

25 Q And then the final sentence of this paragraph says that,

1 We believe that neither the facts nor the law support
2 HarbourVest's, quote, We-were-too-lazy-to-know allegations.

3 Whose words were those, "We-were-too-lazy-to-know
4 allegations"?

5 A I don't recall. They may be mine. It's aggressive the
6 way I am, so that -- that may well be the case.

7 MR. WILSON: All right. Go -- go down to the next
8 page.

9 BY MR. WILSON:

10 Q And with respect your comment that that second paragraph
11 would not have gone to the reporter, look at this email in the
12 middle of the page from Lucy Bannon to Syed Khaderi, September
13 16, 2020, at 1:51 a.m. And --

14 MR. MORRIS: Your Honor, this I will object to as
15 hearsay. There is no witness here to testify to anything on
16 this document.

17 THE COURT: All right. How about that?

18 MR. WILSON: Well, it's -- well, scroll up just a
19 little bit. This email at the top of the page is three
20 minutes after the one in the middle of the page, where Lucy
21 Bannon is forwarding this to James Seery, saying, See below
22 for responses sent to *Creditflux*. Will follow up with the
23 story when it runs or with any other updates.

24 MR. MORRIS: Your Honor, these --

25 MR. WILSON: So I think this --

1 MR. MORRIS: These documents don't appear on the
2 witness list. They're not being offered to impeach anything.
3 They're just -- he's taking discovery as we sit here.

4 MR. WILSON: Your Honor, in response, I'm simply
5 trying to rebut the statements that Mr. Seery made. In fact,
6 he told me just a minute ago that that second paragraph would
7 not have gone out to the reporter. However, this email from
8 Lucy Bannon to Syed Khaderi directly rebuts that statement.

9 THE COURT: But your whole purpose in this line of
10 questioning, with an undisclosed document, is to rebut the
11 earlier testimony he gave before you even put this exhibit in
12 front of him.

13 MR. WILSON: I'm trying to rebut multiple statements
14 that Mr. Seery has made today, and I think it -- you know, if
15 he's going to testify that this information did not go out to
16 a reporter, I think I'm allowed to rebut that to demonstrate
17 that it did.

18 THE COURT: All right. Why didn't you disclose this
19 in advance? It's feeling less and less like an impeachment
20 document the more we go through it.

21 MR. WILSON: Your Honor, I did not -- I did not
22 actually have this document at the time we filed our witness
23 and exhibit list, but I would also say that I didn't have any
24 purpose to use it if I didn't need it for rebuttal.

25 THE COURT: Okay. First off, you're supposed to

1 disclose all exhibits you anticipate using except those for
2 purposes of impeachment. Okay? Not rebuttal, to be
3 technical.

4 So, if you didn't disclose this exhibit, the only way you
5 can use it, subject to other possible objections, is if you're
6 impeaching a statement. And I'm just saying I think we're
7 going beyond trying to impeach the original statement and now
8 we're trying to impeach statements he's made after seeing
9 portions of the document.

10 What did you mean, you didn't have this document in time
11 to disclose it?

12 MR. WILSON: Well, I actually just received this
13 document this morning, Your Honor.

14 THE COURT: Where did you receive it from?

15 MR. MORRIS: From who?

16 MR. WILSON: I -- I honestly do not know the source
17 of this document, although it was provided to me by my client.

18 MR. MORRIS: Your client being Mr. Dondero?

19 THE COURT: Could you answer that, Mr. Wilson?

20 MR. WILSON: Yes, that's -- yes, that's correct.

21 THE COURT: All right. I will -- that's --

22 MR. MORRIS: Your Honor, I'd like to --

23 THE COURT: That's a different can of worms. But for
24 now, I sustain the objection. You're done questioning on this
25 document.

1 MR. WILSON: That's fine, Your Honor. I can move on.

2 BY MR. WILSON:

3 Q Now, Mr. Seery, you would agree with me that whether or
4 not HarbourVest played an active role in the Acis bankruptcy,
5 it was kept apprised of the -- of the ongoings in the
6 bankruptcy? (Pause.) I'm sorry. Could you hear that?

7 A Yes. My understanding is that -- that they were.

8 Q And in fact, did Highland have weekly conference calls
9 with HarbourVest during the Acis bankruptcy to discuss what
10 was going on in the bankruptcy?

11 A I don't know if they were weekly. I've been told that
12 they had regular calls updating HarbourVest, yes.

13 Q Okay. And did Highland produce over 40,000 pages of
14 documents to HarbourVest related to the Acis bankruptcy?

15 A I'm not aware of that, no.

16 Q Have those documents been provided to you?

17 A I hope not.

18 Q So, in your role --

19 A I'm sorry. I don't -- I didn't receive 40,000 documents
20 from anybody.

21 Q Well, did you receive any number of documents that were
22 provided by Highland to HarbourVest during the Acis
23 bankruptcy?

24 A I wasn't involved in this during the Acis bankruptcy. I'm
25 sorry.

1 Q Well, I'm referring to, after you became involved in this
2 Highland bankruptcy, whether you were provided with these
3 documents that were sent from Highland to HarbourVest.

4 A I don't -- I don't know what the documents are. I've
5 reviewed tons of documents with respect to the HarbourVest
6 claims, but I don't know of the documents to which you're
7 referring.

8 Q Okay. And after you performed your investigation into the
9 HarbourVest claim, what was your opinion as to the cause in
10 the reduction in value of HarbourVest's investment in HCLOF?

11 A I think the main cause of the reduction in the investment
12 was the imposition of the Trustee and the failure of Highland
13 HCLOF and then subsequently with the injunction to reset the
14 CLOs.

15 You know, these are -- these are some of the worst-
16 performing CLOs in the market because they weren't reset. And
17 when the liabilities of the CLOs are set at a level to match
18 assets, and then liability -- the assets run off, and the
19 asset financings or the new deals come in at much lower
20 levels, and the obligations of the CLO are not reset, the
21 arbitrage that is the CLO shrinks. And that's what happened
22 to these CLOs.

23 Q And during the course of the Acis bankruptcy, Acis and
24 Brigade were given management responsibilities over the CLOs
25 and HCLOF, correct?

1 A I believe that the Trustee had the overall, and then
2 subsequently, with the confirmation of the plan, they took it
3 over. So I think that ultimately Mr. Terry had the management
4 authority, full management authority, and some advice through
5 Brigade. But I think technically it wasn't actually during
6 the Chapter 7. The Chapter 7 proceeding, I believe that Mr.
7 Phelan had the actual authority.

8 (Echoing.)

9 Q I'm sorry. And so your testimony is that Mr. Phelan had
10 the actual authority but he delegated that authority to Josh
11 Terry and Brigade?

12 A I think that's fair, yes.

13 Q And do you know when that occurred?

14 A I believe that the control of the CLOs was in July of
15 2018, and then the ultimate confirmation of the case was at
16 the very beginning of '19.

17 Q So, after being instituted as portfolio manager, and
18 during the time when Acis and Brigade were working under the
19 direction of the Trustee, who would have receive the fees for
20 managing those portfolios?

21 A I believe -- I don't know. I believe the -- that the Acis
22 estate would have received those fees.

23 Q And who -- and so is that your testimony, that prior to
24 confirmation the Acis estate would have received the
25 management fees?

Seery - Cross

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1 A I believe that -- I believe they would have if they were
2 the manager, yeah.

3 Q Okay. And who would have received the fees after
4 confirmation?

5 A Acis.

6 Q Okay. And who would have had the discretion to set the
7 amount of those management fees?

8 A They would be agreed to in the -- in the investment
9 management agreement.

10 Q They would be agreed to?

11 A Yes. As far as I've seen, I've -- I haven't seen
12 unilateral ability of a manager to set fees at its -- at its
13 whim.

14 Q So is it your understanding that Acis and Brigade ended up
15 charging substantially more fees than Highland had charged
16 when it was under Highland's management?

17 A I think the fees were -- the fees were -- the fees were
18 set by the agreement.

19 MR. MORRIS: Your Honor, I just object to the line of
20 questioning on relevance grounds. This is a 9019 hearing,
21 Your Honor. How -- I just don't think this has any relevance
22 at all.

23 THE COURT: All right. Mr. Wilson, what is the
24 relevance?

25 MR. WILSON: The relevance is that Mr. Seery has

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1 testified that these Acis CLOs were among the worst-performing
2 in the market, and frankly, we would agree with that, and I'm
3 trying to get his understanding as to why, because I think
4 there's direct relevance in the reason that the value of the
5 HarbourVest investment diminished.

6 MR. MORRIS: I don't think that was his testimony,
7 Your Honor. But at the end of the day, Your Honor has heard
8 the litany of reasons why the Debtor is entering into this
9 agreement. I just, I just think it's irrelevant, Your Honor.

10 THE COURT: All right. Mr. Wilson, I barely think
11 this is relevant. I mean, I'm going to give you some benefit
12 of the doubt on that because of, you know, the testimony that
13 HarbourVest lost \$50 million of value and --

14 (Echoing.)

15 THE COURT: -- maybe that shouldn't, you know, lie at
16 the feet of Highland. I think the compromise reflects that
17 they don't -- it doesn't lie entirely at the feet of Highland.
18 But, you know, maybe two or three more questions.

19 MR. WILSON: Yes. Thank you, Your Honor. And I
20 didn't have very much more on this point. But to be a hundred
21 percent honest, I can't remember my question right before the
22 objection.

23 THE WITNESS: I think you were asking me about the
24 fees and somehow alluding or implying that the manager could
25 unilaterally set fees.

1 The fees are set in the investment management contract.

2 The manager doesn't get to wake up on Wednesday and say, you
3 know, I'd like another half a basis point. It doesn't work
4 that way.

5 BY MR. WILSON:

6 Q But you would agree with me that the fees and expenses
7 charged to an investment would impact the performance of that
8 investment in the market?

9 A Absolutely.

10 Q Would you also agree with me that there was one CLO -- and
11 I think you referred to it in your direct testimony -- but CLO
12 7, which continued to be managed by Highland?

13 A That's correct.

14 Q And is it fair to say that CLO 7 exceeded the performance
15 of the CLOs that were managed by Acis and Brigade?

16 A I think that's fair. I don't -- I don't recall the
17 magnitude, but I think it's outperformed those -- those CLOs,
18 yes.

19 Q All right. Well, thank you. I want to turn your
20 attention to the portion of the settlement agreement that
21 deals with voting of the HarbourVest claim. How did
22 HarbourVest's commitment to vote for the plan become a part of
23 the settlement?

24 A Pretty straightforward negotiation. We -- in negotiating
25 the settlement, one of the key factors was the cost and

1 expense of the litigation, in addition to the risk on the --
2 on the fees, and whether we could wrap this up in a global
3 settlement now. So in my experience, it's fairly typical, we
4 would try to do this in every settlement, have the settling
5 party, be that the claimant, agree to support the case and the
6 plan.

7 You know, we did not do that with the Committee members,
8 although we wanted to. (Echoing) I frankly still wish I had.
9 Those little -- little bits that have been difficult
10 (echoing). The Committee members have a different interest in
11 (echoing) than their more global interest for creditors at
12 large, which is more difficult than traditionally in
13 bankruptcy cases, less likely to have a Committee member, a
14 sitting Committee member, actually support the (echoing) of
15 the plan.

16 THE COURT: Mr. Wilson, could you be careful to put
17 your device on mute every time you're not talking? Because
18 we're getting some feedback loop from you when Mr. Seery
19 answers your questions. Okay?

20 (Echoing continues.)

21 THE COURT: Like right now. I'm hearing feedback of
22 my own voice through your speakers.

23 Right, Mike? Isn't that what --

24 A VOICE: I am, too.

25 THE COURT: Yes. Okay. So please be sure you put

1 your device on mute whenever you are not speaking. All right.
2 Go ahead.

3 BY MR. WILSON:

4 Q I mean, I think you just answered this question, but there
5 was -- there was no similar voting provision in the Acis or
6 the Redeemer settlements, correct?

7 A There is not, no. And just as a -- by way of explanation,
8 if it's okay, the reason was my counsel advised against it. I
9 did ask for it.

10 Q Your counsel advised against putting that voting
11 requirement in the Acis and Redeemer settlements?

12 A For the reasons I stated. And in my experience, that's
13 consistent, where sitting members of Committees don't
14 generally sign up to resolve their own claims and support the
15 plan because of their larger fiduciary duties to the creditor
16 body as a whole.

17 Q And during the settlement negotiations of the HarbourVest
18 claim, was this commitment to vote a topic of discussion?

19 A Not -- not particularly, no. It was pretty clear that
20 HarbourVest, if they were going to agree to the settlement and
21 the numbers, could see structure. Obviously, it wanted to
22 understand what the potential distributions would be under the
23 plan, but this was not a hotly-negotiated point.

24 Q And would you consider HarbourVest's commitment to vote
25 for the plan an important part of the settlement?

Seery - Cross

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1 A I think it's an important part of the settlement, that the
2 part of the settlement is the subordinated claim. We could
3 put that into presumably any plan. But our plan does -- does
4 have a Class 9 for that. So I think it's a -- it's a part of
5 the settlement that is important or we wouldn't have included
6 it. It clearly wraps everything up and moves us towards
7 confirmation.

8 Q And would you have made the deal with HarbourVest if they
9 had pushed back on the commitment to vote for the plan?

10 A Yeah, I would have.

11 Q All right. Thank you.

12 MR. WILSON: No further questions.

13 THE COURT: All right. Mr. Draper, anything from
14 you?

15 MR. DRAPER: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. DRAPER:

18 Q Mr. Seery, I may not understand the settlement, and I
19 apologize, but the way I think the settlement reads, the
20 interest that you're acquiring, you have the right to place in
21 any entity. Is that my -- is that correct?

22 A I don't recall the -- the specifics, but just from a
23 structural standpoint, we wanted to be able to put it into a
24 subsidiary as opposed to putting it directly in HCMLP. If we
25 couldn't do that, we would -- we would put it into HCMLP. So

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1 there wasn't a -- I don't recall the actual specifics, but we
2 certainly thought about holding that interest in a -- in a
3 subsidiary, just to have a cleaner hold.

4 Q Why aren't you putting it into the Debtor so the Court and
5 the estate have jurisdiction over that?

6 A I think the Court certainly has jurisdiction over an
7 entity that the estate owns a hundred percent of. I don't
8 think that's -- that's even a close call. So the important --

9 Q Now, --

10 A Can I finish?

11 Q Sure.

12 A You asked me why. To the extent that somebody thinks that
13 problematic, I will consent to the Court having complete
14 jurisdiction over it, since I control it a hundred percent.

15 Q No. The real reason is, if I remember correctly, Mr.
16 Dondero and Judge Lynn filed a motion to have some say or some
17 information as to sales by subsidiaries, and I think you took
18 the position that they weren't entitled to it. And so my
19 concern was that putting this in a subsidiary in a sense gave
20 you unfettered control without any review of the item.

21 A I don't -- I don't think that's the case where we --
22 there's a directly-held subsidiary where we own a hundred
23 percent of it. I don't think that that's the case.

24 Q Okay. But you're willing to (a) put this into the Debtor,
25 number one; and number two, have the estate and have the Court

1 have complete control over the disposition of it and its
2 actions, correct?

3 A That's not correct, no.

4 Q What -- what is incorrect about my statement?

5 A The debtor-in-possession has control of its assets. The
6 Court doesn't have complete control over its assets. There's
7 --

8 Q Well, --

9 A -- issues -- hold on a second. This is not -- this is not
10 a game and a trap. We put it in a subsidiary for specific
11 reasons. You asked why. I'm giving you the why. It's not to
12 hide it from anybody. We're not going to sell the asset
13 unless somebody comes up with a great price for it. We're
14 going to monetize the assets. We're going to control HCLOF by
15 a majority.

16 Q But, again, the issue is, if it's in the estate, the Court
17 has supervision over it. If it's not in the estate, the Court
18 has no supervision of it.

19 A I don't think that's correct, because the Court has
20 supervision over the estate, which owns a hundred percent of
21 the special-purpose entity that will own the shares.

22 Q Okay. All right. Now, let's talk about the \$15 million
23 that you discussed and the legal fees that were incurred. Is
24 that the total amount that was spent, or is -- or is that --
25 was the total amount \$30 million and HarbourVest was only

1 responsible for one half of it or functionally took the brunt
2 of one half of it?

3 A I think the total amount is between \$15 and \$20 million.
4 I don't have the exact numbers.

5 Q So, in fact, the HarbourVest loss due to its ownership
6 would have been one half of that, not \$15 million?

7 A Well, the vehicle lost the money. HarbourVest owned 49.98
8 percent of it, and Highland controlled the rest. So if you
9 allocate it that way, I suppose that would be a -- that's how
10 you would divide it, in -- roughly in half, yes.

11 Q And so HarbourVest's actual dollar loss due to the legal
12 fees is really the 49-point-whatever percent of \$15 million,
13 not \$15 million?

14 A I don't know if -- I certainly would argue that. I don't
15 think that HarbourVest has that position.

16 Q Okay. Now, in connection -- you were asked a question
17 about the documentation that was provided by Highland to
18 HarbourVest both during the bankruptcy of Acis and before.
19 You have control over the Harbour -- over the Highland server,
20 correct?

21 A I'm sorry. Can -- can we do two things? One is, Mr.
22 Draper, I can't see you, so it would be better if I could see
23 you during the questioning.

24 Q Okay.

25 A And could you repeat the question?

1 Q All right. I'll be happy to. You were asked a question
2 about the documentation that was provided by Highland to
3 HarbourVest during the Acis bankruptcy and meetings that took
4 place between the parties. Correct?

5 A Yes.

6 Q And you stated you were unaware of the material that was
7 sent over?

8 A I think I testified that I didn't receive the 40,000
9 documents that were mentioned.

10 Q Did you do any search or order a search of the Highland
11 server to see what material was sent over by any party to
12 HarbourVest to analyze what -- what information they had
13 available to them and what was provided to them?

14 A Yes, we did a search.

15 Q And did you review the documentation that was sent over?

16 A The -- the documentation that we looked at was very
17 specific to the investment and to the OM. So we didn't look
18 for the -- the supposed 40,000 documents, no.

19 Q Did you look for the material that was provided to them
20 during the Acis bankruptcy and the periodic meetings that you
21 discussed? Or that you testified to earlier?

22 A The answer is no.

23 Q One last question. I think, and just so I understand your
24 testimony, you've broken out the HarbourVest claim into two
25 pieces. One is the legal fee amount that we've just

1 discussed, and I gather the other piece of that is the fraud
2 in the inducement to enter into the CLO purchase?

3 A It's -- it's more -- it's much more than that.

4 Q Okay. Well, let me say it in a different way. The other
5 part of it is the losses as a result of the fraud in the
6 inducement to purchase the interest?

7 A I don't think that's -- that's fair. If I could explain?

8 Q Sure.

9 A Yeah. The legal fee piece is pretty clear. The other
10 piece starts with fraud in the inducement, but it's extensive
11 fraud claims. Fraud in the inducement, as I testified
12 earlier, would get them around the exculpation and liability
13 limitations in the OM. You don't get around all of those with
14 just the fraud. And so that's -- that's the split of that
15 claim. So the fraud in the inducement contains fraud
16 allegations. Even if you didn't have inducement, you'd have
17 other potential fraud claims.

18 Q But let me state it in a different fashion. But for the
19 investment, the fraud that you allege wouldn't have occurred?

20 A I -- HarbourVest alleges it.

21 Q No, I'm just -- in your analysis of the claim, but for the
22 inducement, the rest of the damages wouldn't have flowed?

23 A That's HarbourVest's position, yes. But for the fraud,
24 they wouldn't have made the investment.

25 Q All right.

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1 MR. DRAPER: I have nothing further for this witness.

2 THE COURT: All right. Any redirect, Mr. Morris?

3 MR. MORRIS: Just a few very questions, Your Honor.

4 Just a very few questions.

5 REDIRECT EXAMINATION

6 BY MR. MORRIS:

7 Q Mr. Seery, you were asked about that document that Lucy
8 prepared. Do you remember that?

9 A Yes, I do.

10 Q In your experience, don't defendants often deny liability
11 before entering into settlements, or even worse, getting
12 adverse judgments entered against them?

13 A Of course. Yes.

14 Q Okay. And in response to Mr. Draper's questions, isn't
15 the Guernsey claim another claim that the Debtor took into
16 account in assessing the potential risks of this settlement?

17 A There's a number of claims contained in it. As I
18 mentioned earlier, I mentioned the RICO claim. But there is a
19 Guernsey shadow director claim, which is not dissimilar to
20 U.S. claims that somebody effectively controls an enterprise,
21 notwithstanding them not having the official role.

22 Q Okay.

23 MR. MORRIS: I have nothing further, Your Honor.

24 THE COURT: All right. Any recross on that redirect?

25 All right.

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Seery - Redirect

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1 MR. WILSON: No, Your Honor.

2 MR. DRAPER: No, Your Honor.

3 THE COURT: Thank you. Mr. Seery, that concludes
4 your testimony. Thank you.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: We need to take a bathroom break. Before
7 we do, I just want to be clear with what we have left. As I
8 understood it, we were having Mr. Pugatch from HarbourVest.
9 Mr. Morris, will that conclude the Debtor's evidence?
10 (Pause.) Okay. You were on mute, but I think you were saying
11 yes.

12 MR. MORRIS: Sorry. But to be clear, Debevoise is
13 going to be putting their witness on the stand.

14 THE COURT: Okay.

15 MR. MORRIS: But it's part of the evidence in support
16 of the motion.

17 THE COURT: All right. Do the Objectors have any
18 witnesses today?

19 MR. WILSON: Your Honor, Mr. Dondero intends to
20 examine Mr. Pugatch, but if he's going to be called by his
21 counsel, then we will do that as a cross-examination.

22 THE COURT: All right.

23 MR. DRAPER: This is Douglas Draper. I have no
24 witnesses.

25 THE COURT: Okay. All right. Well, I'm asking --

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1 well, I do want to ask: Can we get a time estimate
2 potentially for Mr. Pugatch?

3 MS. WEISGERBER: For my examination, Your Honor,
4 twenty minutes, perhaps.

5 THE COURT: Okay.

6 MS. WEISGERBER: Or less.

7 THE COURT: All right. Well, let me tell you what
8 we're going to do. We're going to take a ten-minute bathroom
9 break. But I have a 1:30 hearing and I have a 2:00 o'clock.
10 Well, I have a 1:30 docket, multiple matters, and a 2:00
11 o'clock docket. So, you know, I'm really intending that we
12 get finished in time to give me and my staff a little bit of a
13 lunch break before launching into the 1:30 docket, so I'm
14 hopeful we can get done around 1:00-ish. If we can't, then
15 we're going to have to reconvene, I'm going to say probably
16 3:00-ish Central time. So let's hope we can get through
17 everything. All right? Ten-minute break.

18 THE CLERK: All rise.

19 (A recess ensued from 11:58 a.m. until 12:08 p.m.)

20 THE CLERK: All rise.

21 THE COURT: All right. Please be seated. We're
22 going back on the record in the Highland matters. Do we have
23 everyone? It looks like we do. Ms. Weisgerber is going to
24 call the next witness; is that correct?

25 MS. WEISGERBER: Yes, Your Honor. We call Michael

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1 Pugatch of HarbourVest to the stand.

2 THE COURT: All right. Mr. Pugatch, if you could
3 turn on your video and say, "Testing one, two."

4 MR. PUGATCH: Two.

5 THE COURT: All right. There you are. Please raise
6 your right hand.

7 MICHAEL PUGATCH, HARBOURVEST'S WITNESS, SWORN

8 THE COURT: Thank you. You may proceed.

9 MS. WEISGERBER: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. WEISGERBER:

12 Q Good morning. Can you please state your name for the
13 record?

14 A Sure. It's Michael Pugatch.

15 Q And where do you work, Mr. Pugatch?

16 A HarbourVest Partners.

17 Q And what is your title?

18 A I'm a managing director in our secondary investment
19 group.

20 Q Did HarbourVest file claims in the Highland bankruptcy,
21 Mr. Pugatch?

22 A We did, yes. Several claims, in fact.

23 Q What was the basis for those claims?

24 A Yeah. Among other things, fraudulent inducement based on
25 misrepresentations and omissions on the part of Highland in

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1 connection with our original investment, mismanagement at the
2 HCLOF level, including inappropriate fees that were charged
3 to investors, among a number of other items as well.

4 Q Can you explain what you mean by misrepresentations made
5 to HarbourVest by Highland?

6 A Yeah, sure. So, you know, based on a number of
7 statements that were made to us around the litigation
8 involving Mr. Terry, some of the intentions found, the
9 structural changes that came to light with respect to HCLOF
10 and our investment, as well as the fact that the arbitration
11 award specifically against Mr. Terry would have no impact or
12 implication on Highland's sale or business.

13 Q And can you explain what you mean by omissions made by
14 Highland to HarbourVest?

15 A Sure. So I would say, really, the implications behind
16 the structural changes that were made at the time of our
17 investment into HCLOF. Also, the intention, clear intentions
18 that Highland had to never, in fact, pay the arbitration
19 award that came to light during our due diligence period to
20 Mr. -- to Mr. Terry as part of the investment. And
21 ultimately the -- what Highland went about doing in terms of
22 stripping assets of Acis that led to the material value
23 declines and destruction of value that we've experienced
24 since our investment.

25 Q You mentioned a diligence period. Did HarbourVest

1 conduct diligence on the investment?

2 A We did. We conducted very detailed due diligence, as we
3 do for all of our investments. That diligence period lasted
4 several months ahead of our investment decision.

5 Q And did HarbourVest conduct that diligence by itself?

6 A No. So, in addition to internal investment professionals
7 at HarbourVest, we engage with outside advisors, both
8 consultants as well as legal advisors, in connection with
9 that due diligence.

10 Q And did Highland answer all of HarbourVest's questions
11 during that diligence period?

12 A They did. And they were numerous. But yes, they
13 answered all the questions that we had for them.

14 Q Was the Terry dispute part of HarbourVest's diligence?

15 A It was. That came up as one of the outstanding items of
16 litigation as part of our due diligence.

17 Q I'm going to ask my colleague to pull up on the screen an
18 exhibit that was on our exhibit list as Items -- Exhibits 34
19 and 35. It's an August 15, 2017 email from Brad Eden to
20 Dustin Willard. Mr. Pugatch, do you recognize this document?

21 A I do, yes.

22 Q And what is it?

23 A This was an email sent to us during our due diligence
24 period in response to a request for more information on the
25 outstanding litigation that Highland was involved with.

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1 MS. WEISGERBER: And if my colleague can just scroll
2 to the attachment to that email.

3 BY MS. WEISGERBER:

4 Q And do you recall the attachment as well, Mr. Pugatch?

5 A Yes, I do.

6 MS. WEISGERBER: And if you can scroll back up to the
7 first email.

8 BY MS. WEISGERBER:

9 Q Who is Dustin Willard?

10 A Yes. Dustin is a colleague of mine at HarbourVest who
11 worked closely with me on this investment.

12 Q And you said that this document was shared with
13 HarbourVest during the diligence period before the HCLOF
14 investment?

15 A It was, correct.

16 Q Is it typical during diligence to receive a description
17 of litigation such as this?

18 A It is. It's a question that we always ask. Certainly a
19 component of our diligence to understand any outstanding
20 litigation on the part of our counterparty or manager that
21 we're investing in.

22 MS. WEISGERBER: Your Honor, I'd move to offer this
23 exhibit into evidence.

24 THE COURT: Any objection?

25 MR. DRAPER: No objection, Your Honor.

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1 MR. MORRIS: No objection from the Debtor, Your
2 Honor.

3 THE COURT: All right. What is the letter or number
4 for this exhibit?

5 MS. WEISGERBER: It's HarbourVest Exhibit 34.

6 THE COURT: All right. So HarbourVest Exhibit 34 is
7 admitted.

8 (HarbourVest's Exhibit 34 is received into evidence.)

9 THE COURT: And I need to be clear where it appears
10 on the docket. Can someone tell me?

11 MS. WEISGERBER: So, it's identified on our exhibit
12 list, not -- it's not attached to the exhibits. It is on the
13 docket. We were -- when we initially filed the exhibit list,
14 we were working out confidentiality issues. But it was
15 subsequently filed with our reply last night. It's at Docket
16 No. 1735 --

17 THE COURT: All right.

18 MS. WEISGERBER: -- at Pages A -- Pages A345 to A350.

19 THE COURT: All right. Very well. Thank you.

20 BY MS. WEISGERBER:

21 Q Mr. Pugatch, we'll just scroll down to the second page of
22 the attachment. Can you describe generally what the
23 litigation says regarding the Terry dispute?

24 A Yes. Generally speaking, this dispute was described as
25 an employee dispute, employment agreement dispute, with Mr.

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1 Terry, who was a former employee of Highland involved in
2 their CLO business, and is described by Highland to us really
3 having to do with a series of false claims, in their opinion,
4 but having to do with a disgruntled former employee.

5 Q And did it strike you as an unusual or significant
6 dispute?

7 A No. I would say we often -- we'll see, you know, former
8 employees with, you know, claims against a former employer in
9 connection with wrongful termination. I wouldn't say it's
10 extremely common, but certainly not entirely out of the
11 ordinary. And based on the explanations that we'd received
12 from Highland, seemed to be more of an ordinary-course type
13 former employee litigation suit.

14 Q Based on what you now know about the Terry dispute, do
15 you believe that this was an adequate disclosure regarding
16 the dispute?

17 A I would say very clearly not, you know, based on the
18 facts that came to light subsequently, the various rulings in
19 connection with the Acis bankruptcy case. What was very
20 clearly not stated are the actual facts and implications of
21 the ongoing litigation with Mr. Terry.

22 MS. WEISGERBER: I'd ask my colleague to put up the
23 next exhibit. Okay. So, this is on a HarbourVest exhibit
24 list, which is Document No. 1723. It's Exhibit 36 on that.
25 Same issue with respect to initially not filed, but it is on

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1 the docket at our response last evening at ECF No. 1735 at
2 Page A351.

3 THE COURT: Page what?

4 MS. WEISGERBER: A351.

5 THE COURT: A351. Thank you.

6 MS. WEISGERBER: You're welcome.

7 BY MS. WEISGERBER:

8 Q Mr. Pugatch, I just put up a November 29, 2017 email from
9 Hunter Covitz to Dustin Willard, Michael Pugatch, and Nick
10 Bellisario. Do you recall this document?

11 A I do, yes.

12 Q And what is this document?

13 A This was an email sent to us by Highland a couple weeks
14 after we closed on our investment on the (inaudible) in
15 response to a *Wall Street Journal* article that had come out
16 regarding Highland, a number of actions that they had taken,
17 and what Highland was articulating to us, a number of false
18 claims that had been made about Highland's prior actions, and
19 specifically trying to explain some of that and also share
20 with HarbourVest a letter that was being sent to the editor
21 of the *Wall Street Journal* highlighting, in their view, some
22 of the inaccuracies around the reporting.

23 Q And did you receive this document?

24 A We did, yes.

25 MS. WEISGERBER: I'd move to offer this, so

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1 HarbourVest Exhibit 36, into evidence.

2 THE COURT: Any objections?

3 MR. WILSON: Your Honor, John Wilson. I would object
4 as to the relevance of this document.

5 THE COURT: All right. What's your response?

6 MS. WEISGERBER: Your Honor, it shows
7 misrepresentations that the witness will testify how it
8 relates back to prior representations prior to HarbourVest's
9 investment, as well as misrepresentations at that time.

10 THE COURT: Okay. I overrule the objection. I'm
11 going to admit it.

12 (HarbourVest's Exhibit 36 is received into evidence.)

13 BY MS. WEISGERBER:

14 Q Mr. Pugatch, can you describe generally -- we spoke about
15 this a little bit -- just what this communication from
16 Highland was conveying to HarbourVest at the time?

17 A Yes. Specifically, again, responding to this *Wall Street*
18 *Journal* article that had been published, trying to defend,
19 again, Highland's own views why there were inaccuracies in
20 the reporting. But importantly, from our perspective, trying
21 to reassure us as to the fact that, you know, these
22 accusations would have no bearing and any results from it
23 would have no bearing on their ongoing business or
24 partnership or the investment that we had made in HCLOF.

25 MS. WEISGERBER: And if you can scroll to the second

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1 page.

2 BY MS. WEISGERBER:

3 Q We'll just look at the last paragraph of another email
4 from Mr. Covitz. Can you just read that first sentence of
5 the last paragraph?

6 A Sure. (reading) While the dispute has no impact on our
7 investment activities, as always, we welcome any questions
8 you may have.

9 Q Mr. Pugatch, was this email and the discussion regarding
10 the Terry dispute consistent with the representations made to
11 you prior to HarbourVest's investment into HCLOF?

12 A It was, yes. Both the message, the lack of any impact
13 that ultimately the dispute with Mr. Terry, the arbitration
14 award would have around Highland's ongoing CLO business, or
15 HCLOF specifically, was all, you know, very clear in this
16 document, but all consistent with the representations that
17 had been made to us leading up to our investment in the
18 middle of November 2017 as well.

19 Q Thank you.

20 MS. WEISGERBER: And you can take down the exhibit,
21 Emily. Thank you.

22 BY MS. WEISGERBER:

23 Q You mentioned, Mr. Pugatch, an arbitration award to Mr.
24 Terry. How did you learn about that arbitration award?

25 A That was initially disclosed to us by Highland as we were

1 in the late stages of our diligence and closing process on
2 the investment into HCLOF.

3 Q And generally, what did Highland tell you about the
4 arbitration award?

5 A We were aware of its existence. We were aware of the
6 quantum of the award, I think it was around an \$8 million
7 arbitration award in the favor of Mr. Terry, and that was
8 following the litigation around the wrongful termination and
9 employee dispute that Highland had described to us
10 previously.

11 Q Did you ask to see a copy of the arbitration award?

12 A No, we did not.

13 Q Why not?

14 A Ultimately, we -- you know, the explanations that
15 Highland had provided to us all seemed very reasonable. We
16 relied on their representations that this was, again, nothing
17 more than a dispute with a former disgruntled employee, in
18 their words, that had no bearing or, you know, would not have
19 any bearing on our investment in HCLOF or their ongoing CLO
20 business, which all very clearly was not the case, as
21 we've -- as we've learned over the last several years.

22 Q Following learning about the arbitration award, did
23 HarbourVest do other diligence?

24 A We did. So, in addition to asking questions related to
25 the arbitration award and any impact that it would have, we

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1 also spent some time diligencing a couple of structural
2 changes that were proposed by Highland, and, in fact, ended
3 up delaying the closing of our investment by about two weeks
4 as we vetted some of those structural changes that Highland
5 had proposed. Vetted those both, you know, internally with
6 Highland directly and with external counsel in order to make
7 sure that those structural changes were in fact legally sound
8 in ultimately making our investment.

9 Q And were those changes proposed following the arbitration
10 award?

11 A They were, yes.

12 Q Did Highland tell you the reason for the structural
13 changes?

14 A Yeah. So, so some of this -- and specifically, this
15 involved a change of the portfolio manager at the HCLOF level
16 that was really in connection with a rebranding as Highland
17 was going through a rebuild of its CLO business and wanting
18 to align, from a brand perspective, their business on an
19 ongoing basis with the Highland brand as opposed to the Acis
20 brand. But more specifically, in the case of a late change
21 from a structured standpoint, the -- part of the intention
22 and the investment thesis of HCLOF was to pursue a reset, a
23 refinancing of all the underlying CLOs as they approached the
24 end of their investment period or came out of their
25 investment period.

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1 And in connection with that, in light of the arbitration
2 award, Highland's view was that there may be difficulties in
3 the market in resetting certain of those Acis CLOs with the
4 Acis brand associated with them, given, again, the existence
5 of the arbitration award and concerns in the market around
6 the Acis brand reputation.

7 Q And what did they tell you was the market view of Acis,
8 or the Acis brand?

9 A Yeah. Their view or their concern was that the, you
10 know, because of the existence of that arbitration award, the
11 brand would be viewed as toxic.

12 Q Didn't this put you on notice that perhaps there was
13 something wrong with the structural changes?

14 A I mean, we -- I mean, short answer, no. We ultimately
15 asked questions, we diligenced the legal structure, but
16 relied on the representations that were made to us by
17 Highland around the rationale for the structural changes,
18 that these are all changes that were within a Highland-
19 managed vehicle or sat below the vehicle that we were
20 investing in, and so ultimately were in Highland's purview,
21 was the representations that we relied on.

22 Q And did HarbourVest alone do that diligence of the
23 structural changes?

24 A So, no. I mean, in connection with the diligence that we
25 did internally and with Highland directly, we engaged with

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1 outside counsel who was working with us at the time to vet
2 those structural changes as well.

3 Q Did HarbourVest rely on Highland's representations
4 regarding the arbitration award and the structural changes in
5 making its investment in HCLOF?

6 A We did, absolutely.

7 Q If Highland had disclosed the nature of the structural
8 changes, of removing Acis as the portfolio manager and
9 related transfers, would HarbourVest have proceeded with its
10 investment?

11 A Definitively, no, we would not have.

12 Q Why not?

13 A I think the reality is if we had understood the intent,
14 you know, that Highland was ultimately undertaking here, we
15 would not have wanted to be any part of this, and certainly
16 getting dragged into all of this, the hassle, the value
17 destruction that we've seen on behalf of the investors and
18 the funds that we manage. And I would say, lastly, we just
19 full stop would not have done business with a firm who
20 engages with this type of behavior, had we actually known the
21 truth.

22 Q Mr. Pugatch, are you familiar with the bankruptcy that
23 followed of Acis?

24 A Yes.

25 Q And what was your -- or, did HarbourVest participate in

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1 that bankruptcy?

2 A So, initially, no. Subsequently, we ended up getting
3 dragged into that on account of a number of misstatements by
4 Highland about the role that HarbourVest had played as part
5 of our investment into HCLOF and some of that structure and
6 the structural changes that I alluded to.

7 Q How did HarbourVest learn about those misstatements in
8 the bankruptcy about HarbourVest's role?

9 A So, ultimately, those came to light on -- you know, on
10 account of the ongoing proceedings within the Acis bankruptcy
11 process, and specifically brought to light to us by the Acis
12 trustee at the time, who decided to pursue, you know, further
13 diligence or discovery around the claims that Highland had
14 made around HarbourVest's involvement in those changes.

15 Q And what is your understanding of what the allegations
16 were that caused the Acis trustee to investigate HarbourVest?

17 A Sure. So, you know, our understanding was that Highland
18 had made statements, again, false statements that HarbourVest
19 had actually instructed some of those structural changes,
20 that we were the ones that had said that we would not do
21 business with Acis and had ordered some of the underlying
22 transfer of assets or, again, structural changes, that, you
23 know, very clearly I would say were not the case. Also, that
24 HarbourVest was -- was calling the shots as it relates to any
25 of the ongoing management or future resets of the CLOs.

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1 Q Did HarbourVest instruct any of those structural changes
2 or transfers to occur?

3 A We did not. Absolutely not.

4 Q Why didn't HarbourVest itself appear in the Acis
5 bankruptcy and file a claim?

6 A Yeah. HarbourVest's role, again, in HCLOF, we were a
7 passive investor in a Highland-managed company. We had no
8 direct interaction with or relationship with Acis. There was
9 really no reason for us to be directly involved until we were
10 subsequently dragged into involvement on account of those
11 misstatements. And then at that point our focus really
12 pivoted to, you know, whether we needed to defend ourselves
13 against those accusations that had been made by Highland and
14 after a request for further information in discovery by the
15 Acis trustee.

16 Q Did HCLOF participate in the Acis bankruptcy?

17 A They did, yes.

18 Q Did HCLOF incur fees for participating in the Acis
19 bankruptcy?

20 A Yes. In fact, very meaningful fees, to the tune of well
21 in excess of \$15 million of legal fees, as we understand it,
22 that have been incurred, largely in connection with the
23 ongoing Acis bankruptcy and Highland's continued pursuit of
24 and in connection with the litigation with Mr. Terry, which
25 we firmly believe was entirely inappropriate that HCLOF and

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1 ultimately investors in HCLOF bear those expenses, which were
2 not just expenses of HCLOF but of Highland and a number of
3 other Highland affiliates.

4 Q Do those expenses form a basis of separate claims filed
5 by HarbourVest against Highland?

6 A They do, yes. One of the multiple claims that we had
7 filed against Highland.

8 Q And a few more questions, just for the record, Mr.
9 Pugatch. How much did HarbourVest initially invest in HCLOF?

10 A Sure. So, our initial investment in November of 2017 was
11 right about \$73-1/2 million, I believe.

12 Q Did HarbourVest invest any additional money in HCLOF?

13 A We did. There was a subsequent capital call investment
14 of about \$5 million, bringing our total investment to just
15 under \$80 million in aggregate.

16 Q When HarbourVest initially made the investment, did it
17 anticipate making a profit on it?

18 A We did, yes.

19 Q How much did HarbourVest anticipate earning from the
20 investment?

21 A Yeah. So, our -- based on the original \$73-1/2 million
22 investment, we had expected a total return of about \$137
23 million on that -- on that investment.

24 Q What was that projection based on?

25 A So, that projection was based on materials that we had

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1 received from Highland, their internal projection models on
2 the future performance of the underlying CLOs that we were
3 acquiring exposure to through our investment in HCLOF, and
4 was one of the inputs or formed the basis in connection with
5 our diligence that we ultimately ran different sensitivities
6 -- projections around and helped employ -- helped inform our
7 investment thesis.

8 Q Do you know the current value of HarbourVest's investment
9 in HCLOF?

10 A Yes. The current value is right around \$22-1/2 million.

11 Q So roughly how much has the investment itself decreased
12 from HarbourVest's initial investment?

13 A So, net of what was about \$4-1/2 million of distributions
14 that we received early on in the investment, we've lost, to
15 date, in excess of \$50 million on our original investment.

16 Q And just for -- to close out, Mr. Pugatch, knowing all
17 that you know, if HarbourVest had known that -- about the
18 nature of the transfers by Acis or Highland's intent with
19 respect to the arbitration award, would HarbourVest have made
20 this investment?

21 A No. The reality is, had we known the truth, or even had
22 a sense of the truth, the true intentions behind some of
23 those transfers and ultimately what would have happened, we
24 never would have made this investment, full stop.

25 Q Thank you, Mr. Pugatch.

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1 THE COURT: All right. I didn't hear you, Ms.
2 Weisgerber. Do you pass the witness?

3 MS. WEISGERBER: Yes, I pass the witness.

4 THE COURT: All right. Thank you.

5 Mr. Morris, any examination from you?

6 MR. MORRIS: No, thank you, Your Honor.

7 THE COURT: All right.

8 (Interruption.)

9 THE COURT: All right. I'm not sure whose voice that
10 was, but please, again, mute your devices when you're not
11 talking.

12 Any cross-examination of Mr. Pugatch? I'll start with
13 you, Mr. Wilson.

14 MR. WILSON: Yes, Your Honor.

15 THE COURT: Okay.

16 CROSS-EXAMINATION

17 BY MR. WILSON:

18 Q How are you -- I guess we're afternoon now. How are you
19 this afternoon, Mr. Pugatch?

20 A I'm doing well. Yourself?

21 Q I'm doing well as well. Do you recall that on Monday of
22 this week I took your deposition?

23 A Yes, I do.

24 Q And so you understand that my name is John Wilson and I
25 represent Jim Dondero, who has filed an objection to the 9019

1 motion filed by the Debtor?

2 I've got a few questions for you today. Has HarbourVest
3 been around for over 35 years?

4 A We have, yes.

5 Q And does HarbourVest have ten offices around the world?

6 A Correct, yes.

7 Q And does HarbourVest employ over 150 investment
8 professionals?

9 A Yes.

10 Q Does HarbourVest have over \$74 billion in assets under
11 management?

12 A Correct, yes.

13 Q And is HarbourVest's client base largely comprised of
14 institutional investors?

15 A Also correct.

16 Q And you would agree with me that HarbourVest is a
17 sophisticated investor, right?

18 A I would, yes.

19 Q How long have you worked for HarbourVest?

20 A I've been employed by HarbourVest for 17 years now.

21 Q And how long have you been a managing director?

22 A I've been a managing director for approximately six
23 years.

24 Q And you were, in fact, the managing director for the
25 investment that HarbourVest made in Highland CLO Funding,

1 Ltd., which has been referred to today as HCLOF, correct?

2 A I was, correct.

3 Q And HarbourVest, I think you just testified, invested
4 approximately \$73 million as its initial investment in HCLOF?

5 A Yes, correct.

6 Q And before HarbourVest made that investment, it had made
7 many investments of this type, correct?

8 A Yeah. We've made hundreds of investments into
9 partnerships over our history, correct.

10 Q So HarbourVest was well-experienced in evaluating and
11 deciding whether to invest in large investments, correct?

12 A It was, yes.

13 Q Now, in your -- and by your, I mean HarbourVest -- in the
14 response to the Debtor's omnibus objection, it says that by
15 summer 2017 HarbourVest was engaged in preliminary
16 discussions with Highland regarding the investment. Is that
17 a correct statement?

18 A Correct, yes.

19 Q And, in fact, those talks began in the second quarter of
20 2017, correct?

21 A Yes.

22 Q And so the investment closed ultimately on November 15th,
23 2017?

24 A Yes, that's correct.

25 Q So it's fair to say that HarbourVest considered and

1 evaluated this transaction for over six months before
2 investing its \$73 million, right?

3 A From the time of the initial conversations that we had
4 with Highland, yes.

5 Q And one of the reasons that it took over six months to
6 complete the investment is that HarbourVest performs due
7 diligence before it makes an investment, correct?

8 A Correct.

9 Q And when you're performing due diligence -- well, first
10 off, you would agree with me that that's a common practice
11 amongst sophisticated investors such as HarbourVest, correct?

12 A To perform due diligence?

13 Q Yes.

14 A Yes.

15 Q And describe -- describe what HarbourVest does in a
16 general sense when it performs its due diligence.

17 A Sure. So, we spend time with the manager -- in this
18 case, Highland -- certainly around the investment thesis, the
19 opportunity, receive materials around the underlying assets.
20 We take that and perform our own independent due diligence
21 around the value of those assets, perform due diligence on
22 the manager itself, the go-forward opportunity. In many
23 cases, and certainly in this case, engage with outside
24 advisors to assist with that due diligence. It's a very
25 robust and thorough process.

1 Q And by outside advisors, are you referring to the outside
2 counsel that you testified about earlier?

3 A Yes. Both outside counsel and outside consultants.

4 Q Okay. And so did you say that it's typical to engage
5 outside counsel when performing due diligence?

6 A Yes.

7 Q And which outside counsel did you retain with respect to
8 this due diligence?

9 A Debevoise and Plimpton as well as Milbank.

10 Q And during the course of HarbourVest's due diligence, did
11 it identify some items of concern?

12 A As with any investment, there are always items that are
13 identified that require further diligence, risks that are
14 identified that we look to mitigate through our due
15 diligence, et cetera.

16 Q And if Harbour -- I'm sorry, did you say something else?

17 A No.

18 Q You were finished? Okay. Now, if HarbourVest identifies
19 an item of concern, is it typical to request additional
20 information regarding those items of concern?

21 A It is, yes.

22 Q And so that actually happened with respect to the HCLOF
23 investment, correct?

24 A In certain cases, yes.

25 Q HarbourVest identified several litigation matters that it

1 had questions about, correct?

2 A Correct. As we would with any investment.

3 Q And it went back to Highland and asked them to explain
4 their position on those litigation matters?

5 A Correct.

6 Q And one of those litigation matters was the Joshua Terry
7 litigation, correct?

8 A Yes.

9 Q And at the time that HarbourVest was considering this
10 investment, beginning in the second quarter and continuing
11 through the summer, that Josh Terry litigation had not
12 resulted in an award or a final judgment, correct?

13 A Correct.

14 Q And I think we looked earlier at a document that your
15 counsel admitted as HarbourVest Exhibits 34 and 35. There
16 was an email from a HarbourVest -- or, I'm sorry, from a
17 Highland representative to a HarbourVest representative that
18 was discussing Highland's position on the litigation,
19 including the Terry litigation, correct?

20 A Are you referring to the document that we looked at
21 earlier?

22 Q I am. And I can put it on the screen if we need to.

23 A No. Right, I recall that, and yes, that's correct.

24 Q Okay. And just to be clear, that document, which stated
25 Highland's positions on the -- and summaries of the

1 litigation, was issued months before the arbitration award to
2 Josh Terry, correct?

3 A I don't remember the exact timing, but it was certainly
4 during our due diligence period and prior to the arbitration
5 award, yes.

6 Q Well, it seems to me that that email that you -- your
7 counsel admitted as an exhibit was issued in August of 2017.
8 Does that sound right to you?

9 A If that's what the email said, yes.

10 Q And if the Terry arbitration award came out in October,
11 then you would agree with me that that is several months
12 prior to the -- or at least two months prior to the
13 arbitration award?

14 A Yes.

15 Q And so when HarbourVest made requests of Highland to
16 provide information regarding its items of concern, Highland
17 complied with those requests, correct?

18 A It did, correct.

19 Q And was there ever a time when HarbourVest requested
20 Highland to provide information and that information was not
21 provided?

22 A Our requests for information, or at least, you know,
23 responses or color to a question, were always met either
24 with, you know, written or verbal communication back to us,
25 yeah.

1 Q And you would agree with me that, in fact, HarbourVest
2 delayed the closing of the investment by two weeks to
3 continue its due diligence, correct?

4 A Correct, related to the structural changes that were made
5 close to closing. That's right.

6 Q And after conducting that due diligence, HarbourVest
7 satisfied itself that the investment was sound?

8 A That the legal structure that had been put in place in
9 connection with those proposed changes by Highland was -- was
10 legally sound, yes, and on the back of, again, statements and
11 misrepresentations on the part of Highland around the nature
12 and potential impact to their ongoing CLO business and HCLOF.

13 MR. WILSON: Well, I'm going to object to the latter
14 part of your response as nonresponsive.

15 THE COURT: Sustained.

16 BY MR. WILSON:

17 Q Now, after you conducted the due diligence, HarbourVest
18 made the investment of \$73 million on November 15th, 2017,
19 correct?

20 A Correct.

21 Q And so I think you testified earlier that prior to that
22 investment HarbourVest had become aware that that Josh Terry
23 litigation had resulted in an arbitration award, correct?

24 A Yes.

25 Q But I think you've also testified that HarbourVest did

1 not request that Highland provide a copy of the arbitration
2 award, correct?

3 A That's correct.

4 Q And you further testified that you were represented by
5 outside counsel at the time, correct?

6 A Correct.

7 Q And as of Monday of this week, you had not reviewed that
8 arbitration award; is that correct?

9 A That's correct.

10 Q Have you reviewed that arbitration award since Monday of
11 this week?

12 A I have not.

13 Q But in any event, you testified that Highland told you
14 about the award?

15 A Yes.

16 Q And they told you the amount of the award?

17 A Yes.

18 Q And then they told you that the award had been converted
19 to a judgment?

20 A When you say the award had been converted to a judgment,
21 can you be more specific?

22 Q Well, I don't know how familiar you are with the
23 litigation process, but in this instance, that award was
24 taken to a court and the court entered a judgment on the
25 arbitration award. Did you -- were you aware of that?

1 A I don't recall the specific legal terms of judgment
2 against it. I was award of the existence of the arbitration
3 award and the -- and the obligation for Highland to comply
4 with that arbitration award.

5 Q And HarbourVest did not make an appearance in the Acis
6 bankruptcy, right?

7 A We did not.

8 Q But you were aware of the Acis bankruptcy, correct?

9 A Yes.

10 Q And you were kept apprised of the Acis bankruptcy by
11 Highland individuals, correct?

12 A We had conversations with a couple of Highland
13 individuals throughout the Acis bankruptcy process, yes.

14 Q Right. And in fact, you testified that you participated
15 in regular conference calls with Highland regarding that
16 bankruptcy?

17 A That's correct, yes.

18 Q And do you recall having been provided with over 40,000
19 documents by Highland related to the Acis bankruptcy?

20 A I do not recall that, no.

21 Q Would those documents have been provided to your outside
22 counsel, had you received them?

23 A I don't know the answer to that.

24 Q Did the outside counsel that represented you in the due
25 diligence continue to represent you throughout the Acis

1 bankruptcy?

2 A They did. One of the counsels did, correct.

3 Q And which counsel was that?

4 A Debevoise.

5 Q So was your counsel actively involved with monitoring the
6 Acis bankruptcy?

7 A They were, yes, particularly after we were ultimately
8 accused of having something to do with the original structure
9 and -- as a result of misstatements by Highland.

10 Q Did your counsel attend hearings in the Acis bankruptcy?

11 A I don't recall.

12 Q Are you familiar with the PACER system?

13 A I am not.

14 Q Now, I think that HarbourVest has been described as a
15 passive investor. You recall that description of HarbourVest
16 in this instance?

17 A Yes.

18 Q But, in fact, HarbourVest invested substantial assets
19 such that it owned a 49.98 percent share of HCLOF. Would you
20 agree with that?

21 A That's correct.

22 Q And in fact, the next largest investor was CLO Holdco,
23 which owned 49.02 percent of the shares, correct?

24 A That sounds right.

25 Q And there was an advisory board that was created pursuant

1 to the formation documents of this investment, correct?

2 A That's correct.

3 Q And in fact, that advisory board only had two members,
4 and one was a representative of HarbourVest and one was a
5 representative of CLO Holdco, correct?

6 A Correct.

7 Q And the advisor -- I'm sorry, the portfolio manager was
8 not allowed to disregard the recommendations of the advisory
9 board, correct?

10 A With respect to the limited set of items that the
11 advisory board could opine on, that is correct.

12 Q All right. I want to go over a couple of the
13 misrepresentations that HarbourVest has identified in its
14 filings related to its claim. The first one is -- and just
15 for the record, I'm reading from Docket No. 1057 filed on
16 September 11, 2020, HarbourVest Response to Debtor's First
17 Omnibus Objection.

18 But the first misrepresentation identified in that
19 document says that Highland never informed HarbourVest that
20 Highland had no intention of paying the arbitration award.
21 And was -- was Highland obligated to pay the Josh Terry
22 arbitration award against Acis?

23 MR. MORRIS: Objection to the question to the extent
24 it calls for a legal conclusion.

25 THE COURT: Sustained.

1 MS. WEISGERBER: Join in that objection.

2 THE COURT: Sustained. I think --

3 BY MR. WILSON:

4 Q Your understanding was --

5 MR. WILSON: I'm sorry, Judge?

6 THE COURT: I sustained the objection as calling for
7 a legal conclusion. So, next question.

8 MR. WILSON: Yes, I -- I heard that. Thank you, Your
9 Honor.

10 BY MR. WILSON:

11 Q In your understanding, was Highland responsible for
12 paying the arbitration award to Josh Terry?

13 A My understanding is on the account of the fact that Acis
14 --

15 MS. WEISGERBER: Objection, Your Honor. Objection,
16 Your Honor, same basis.

17 THE COURT: Sustained. It was essentially the same
18 question.

19 MR. WILSON: Well, Your Honor, I didn't ask --

20 THE COURT: It was essentially the same question, Mr.
21 Wilson. Move on.

22 MR. WILSON: Okay.

23 BY MR. WILSON:

24 Q The next misrepresentation identified by HarbourVest said
25 that Highland did not inform HarbourVest that it undertook

1 the transfers to siphon assets away from Acis, LP and that
2 such transfers would prevent Mr. Terry from collecting on the
3 arbitration award. So the basis for that allegation would be
4 that Highland was siphoning assets from Acis to avoid having
5 Acis pay the arbitration award, correct?

6 A That -- that would be the implication, yes.

7 Q Okay. And then that misrepresentation continues on and
8 says that Highland represented to HarbourVest that it was
9 changing the portfolio manager because Acis was toxic. And
10 do you recall that representation being made to you?

11 A Yes, I do.

12 Q And would you agree with me that whether or not Acis is
13 toxic in the industry would be an opinion?

14 A I suppose it would be an opinion, but by the manager of
15 the vehicle responsible for managing the HCLOF investment and
16 the underlying CLOs. Yeah, we viewed the Acis name and the
17 Highland name as synonymous, if you will. I mean, Acis was a
18 subsidiary of Highland. For all intents and purposes, it was
19 the same from our perspective as we made the investment into
20 HCLOF.

21 Q So did HarbourVest have an independent understanding of
22 whether or not the Acis name was toxic in the industry?

23 A We did not, no. We relied on Highland's views of that as
24 manager of HCLOF.

25 MR. WILSON: Your Honor, just a brief housekeeping

1 item. Did you say that we need to be done at 1:00 o'clock?

2 THE COURT: Well, I said I really wanted you to be
3 done by 1:00 o'clock because I have a 1:30 docket and a 2:00
4 o'clock docket and I'd rather not have to hang up 70-
5 something people and reconnect them again at 3:00 o'clock.
6 How close are you to being finished?

7 MR. WILSON: Well, --

8 THE COURT: This is going at a very slow pace.

9 MR. WILSON: Well, I apologize for that, Your Honor.
10 I think I've got at least ten more minutes, but -- but I know
11 we also have closing remarks. And I was just going to ask if
12 Your Honor had a preference of --

13 THE COURT: Keep going.

14 MR. WILSON: -- of breaking now --

15 THE COURT: Keep -- let's --

16 MR. WILSON: -- or keep going? Okay.

17 THE COURT: Let's talk fast and try to get through.
18 You know, even if I'm sacrificing lunch today, I don't want
19 to inconvenience 75 people this way. So we'll just probably
20 start our 1:30 hearing a little late and inconvenience those
21 people.

22 All right. Go ahead.

23 MR. WILSON: All right. Thank you, Your Honor.

24 BY MR. WILSON:

25 Q Did Acis form its -- I can't recall if you answered this

1 question, but did Acis form its own opinion on whether or not
2 -- I'm sorry, strike that. Did HarbourVest form its own
3 opinion on whether or not the Acis name was toxic in the
4 industry?

5 MS. WEISGERBER: Objection, --

6 THE WITNESS: We did not. We didn't have a basis.

7 THE COURT: I'm sorry, did I have an objection?

8 BY MR. WILSON:

9 Q You did not --

10 THE COURT: Did I have an objection?

11 MS. WEISGERBER: Yeah. Objection. Yes. Objection,
12 asked and answered, Your Honor.

13 THE COURT: Overruled. He can answer.

14 BY MR. WILSON:

15 Q Okay. But --

16 A We did not.

17 Q Did Highland have the ability to investigate the Acis
18 name and make its own determination of whether that name was
19 toxic? I'm sorry, I think I'm misspeaking. HarbourVest.

20 A HarbourVest had the ability to do that, yes.

21 Q I apologize I misspoke. I meant HarbourVest. Did
22 HarbourVest have the ability to investigate that name and
23 determine if it was toxic?

24 A It was irrelevant to our investment thesis. And as I
25 said before, Acis was a subsidiary of Highland. We viewed

1 them as interchangeable in the context of our investment.

2 Q Okay. The next misrepresentation that you refer to says
3 that Highland indicated to HarbourVest that the dispute with
4 Mr. Terry would have no impact on its investment activities.
5 Would you agree with me that that is also an opinion?

6 A It was a statement that --

7 MS. WEISGERBER: Your Honor, I'm going to object to
8 the extent these questions are seeking a legal conclusion
9 regarding, you know, if something's an opinion or not.

10 THE COURT: Okay. Overruled. He can answer.

11 THE WITNESS: It was -- it was a statement that was
12 made to us by Highland and represented in multiple different
13 formats as fact. And a representation that we relied on in
14 connection with our investment.

15 BY MR. WILSON:

16 Q And finally, the misrepresentation, the last
17 misrepresentation identified, is that Highland expressed
18 confidence in the ability of HCLOF to reset or redeem the
19 CLOs. Would you agree with me that that statement is an
20 opinion?

21 A On the basis that it was the core investment thesis of
22 the -- of the investment of HCLOF. Again, whether that's
23 legally viewed as an opinion or a fact, it was -- it was
24 certainly the investment thesis that we made the investment
25 predicated upon.

1 Q And you just testified that you thought that Acis and
2 Highland were interchangeable from the perspective of the
3 investment opportunity, correct?

4 A Correct.

5 Q But you also accepted Highland's recommendation because
6 HarbourVest agreed that the change in the -- to a Highland
7 manager made commercial sense, correct?

8 A We took at face value what Highland recommended because
9 this all had to do with the structuring of an entity that
10 they fully managed with respect to multiple underlying
11 subsidiaries that weren't managed by Highland.

12 Q But would you agree that, at the time, you -- HarbourVest
13 thought that made commercial sense?

14 A It did not seem unreasonable to us based on the
15 explanation we were given.

16 Q Okay.

17 MR. WILSON: I want to refer to HarbourVest Exhibit
18 39.

19 (Pause.)

20 THE COURT: What are we waiting on? What are we
21 waiting on?

22 MR. WILSON: I'm trying to get the document on the
23 screen, Your Honor.

24 (Pause.)

25 THE COURT: We can't hear you. We can't hear you.

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1 MR. WILSON: I'm sorry. I'm sorry, Your Honor. I'm
2 speaking with my --

3 THE COURT: Okay.

4 MR. WILSON: -- co-counsel here.

5 THE COURT: All right.

6 (Pause.)

7 MS. WEISGERBER: Mr. Wilson, is it 39 or 38 that
8 you're referring to?

9 MR. WILSON: 39. HarbourVest 9019 motion on the
10 main -- on the Dondero file. And then there's the -- it's --
11 it's John -- and then there's the HarbourVest, and then the
12 exhibits are all in one file.

13 MS. WEISGERBER: Mr. Wilson, I'll just note that 39
14 was subject to confidentiality based on HCLOF's request.
15 HCLOF's counsel is present. I think they know it's an
16 excerpt. But I'd just -- that for HCLOF's counsel.

17 MR. WILSON: Well, is there an objection to showing
18 this document on the screen? Yes. All right. We're not
19 going to put Document 39 on the screen.

20 A VOICE: Yes.

21 MR. WILSON: All right. Scroll down to the next
22 page.

23 BY MR. WILSON:

24 Q This is a -- this is a document that was produced to us
25 this week, the Highland production. It appears to be a

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1 Highland CLO Funding, Ltd. Statement of Operations for the
2 Year Ended 31 December 2017. Do you see at the top of that --
3 at the top of that document where it says total investment
4 income of \$26 million?

5 A I do, yes.

6 Q And total expenses were roughly \$1.8 million?

7 A Yes.

8 Q And then net change and unrealized depreciation on
9 investments and net realized loss on investments was \$4.26
10 million cumulative, resulting in a net increase in net assets
11 resulting from operations of \$20.224 million. Do you agree
12 with that?

13 A Yes.

14 Q Okay.

15 MR. WILSON: Go to the next one.

16 BY MR. WILSON:

17 Q And you understand that, in the course of the Acis
18 bankruptcy, the portfolio managers for certain of the CLOs
19 were changed by the Trustee, correct?

20 A Yes, around the underlying CLOs. That's -- that's my
21 understanding, yes.

22 Q And, in fact, Mr. Seery testified earlier today that that
23 occurred in the summer of 2018, correct?

24 MR. WILSON: Scroll.

25 THE WITNESS: I don't recall the timing, but that's

1 what he testified to.

2 BY MR. WILSON:

3 Q Well, this document is HarbourVest Exhibit 40, and this is
4 the statement of operations for the financial year ended 31
5 December 2018. Here, the total investment income is only
6 \$11.1 million. Do you see that?

7 A I do.

8 Q And do you see where the expenses have increased to \$13.6
9 million?

10 A I do, yes.

11 MR. WILSON: Okay. Scroll down some more.

12 BY MR. WILSON:

13 Q And do you see where it says net change and unrealized
14 loss on investments of \$48.47 million?

15 A Yes.

16 Q And so after Acis and Brigade took over the managements of
17 these CLOs, we had a net decrease in net assets resulting from
18 operations of \$52.483 million in the year 2018, correct?

19 MS. WEISGERBER: Objection, Your Honor. Assumes a
20 fact not in evidence.

21 THE COURT: Overruled. He --

22 MR. WILSON: Your Honor, --

23 THE COURT: We're just looking at this statement and
24 testifying about it says, so I overrule the objection.

25 MR. WILSON: Thank you, Your Honor. Thank you, Your

1 Honor. I'm now going to turn to HarbourVest Exhibit 41. All
2 right. I'll --

3 BY MR. WILSON:

4 Q Did you answer the question, Mr. Pugatch?

5 A No, I -- I would agree with the second part of your
6 statement that for the year 2018 the -- the loss was \$52
7 million. I don't -- I don't believe that jives with the first
8 part of your statement that that was after Acis and Brigade
9 took over. As I understand, that was in the middle of the
10 year.

11 Q But in any event, Acis and Brigade had been managing this
12 for at least six months of 2018 when that loss occurred,
13 correct?

14 A They had been managing a portion of the underlying CLO
15 portfolio held by Highland CLO Funding.

16 Q All right. We're now looking at Exhibit #41, which is the
17 Draft Unaudited Statement of Comprehensive Income, 31 December
18 2019. Total income has now dropped to \$4.664 million.

19 MR. WILSON: And scroll down.

20 BY MR. WILSON:

21 Q Expenditures are at \$3.645 million. And then it says
22 investment gains and losses net out to \$11.493 million, a
23 negative \$11.493 million. And --

24 MR. WILSON: Scroll down to the --

25 BY MR. WILSON:

1 Q And so would you agree with me that in the year 2019,
2 HCLOF showed a net loss of \$10.476 million?

3 A Yes, that's what the financial statements say.

4 Q And in this year, the Acis CLOs were solely managed by
5 Acis and Brigade, correct?

6 A The Acis CLOs were. Yes, correct.

7 Q All right.

8 MR. WILSON: Now, go to 42.

9 BY MR. WILSON:

10 Q Now, this is HarbourVest #42.

11 MR. WILSON: Go down to the next page.

12 BY MR. WILSON:

13 Q And this is the Highland CLO Funding, Ltd. Unaudited
14 Condensed Statement of Operations for the Financial Period
15 Ended 30 June 2020. And so this is just half a year of
16 operations. And would you -- and this actually has a
17 comparison between 2019 and 2020. But do you see where it
18 says investment income has dropped from a million dollars in
19 the first half of 2019 to \$381,000 in the first half of 2020?

20 A Yes.

21 MR. WILSON: Okay. Scroll down.

22 BY MR. WILSON:

23 Q And do you see where, in the first half of 2019, total
24 expenses were \$1.85 million, and then in the first half of
25 2020 total expenses were \$2.16 million? Do you see that?

1 A I do.

2 Q And if you go down below that, where it says Net Realized
3 and Unrealized Gain/Loss on Investments, the first half of
4 2019 HCLOF lost \$12 million, and in the first half of 2020 it
5 lost \$39.472 million?

6 MR. MORRIS: Your Honor, I'm going to object. It's
7 John Morris for the Debtor. I'm happy to stipulate. In fact,
8 he can offer this document into evidence. There's no
9 foundation that Mr. Pugatch has any particularized knowledge
10 about any of the numbers behind this. All he's asking him to
11 do is to confirm what the document says. It says what it
12 says. But this -- I'll object on that basis, Your Honor.

13 THE COURT: All right. Mr. Wilson, what about it?
14 You're just getting him to read numbers off of these exhibits.

15 MR. WILSON: Well, --

16 THE COURT: Shall we just --

17 MR. WILSON: -- I understood --

18 THE COURT: -- by stipulation get them into evidence?

19 MR. WILSON: Well, --

20 MR. MORRIS: No objection, Your Honor.

21 MS. WEISGERBER: No objection.

22 THE COURT: All right. So these are exhibits what?
23 We've gone through 39, 41, and I don't know what else. 40,
24 maybe?

25 MR. WILSON: It was Exhibits 39, 40, 41, and 42 that

1 were on the HarbourVest exhibit list.

2 THE COURT: All right. Those will be admitted, and
3 we've already discussed what docket entry number they appear
4 at.

5 (HarbourVest's Exhibits 39 through 42 are received into
6 evidence.)

7 THE COURT: All right. Anything else? You told me
8 you had 10 more minutes about 15 minutes ago.

9 MR. WILSON: Well, I'm sorry if I -- I think I had
10 said I had at least ten more minutes, and I was looking at the
11 -- it was 10:50 [sic] and you wanted to quit at 1:00. So I do
12 have longer than that. I'm sorry, Your Honor.

13 THE COURT: Well, --

14 MR. WILSON: But --

15 THE COURT: -- I feel like I'm being --

16 MR. WILSON: -- I'll try to proffer --

17 THE COURT: Okay, Mr. Wilson, let me just tell you
18 something. I feel like I'm being disrespected now, and the
19 parties are. We really need to pick up the pace. I've told
20 you I've got a 1:30 docket -- with four or five matters on it,
21 by the way. I've got a 2:00 o'clock docket. I'm starting
22 them late. No one advised my courtroom deputy that we were
23 going to need all day today for this, okay? So you've got
24 five more minutes to wrap it up, and then, of course, I have
25 to go to Mr. Draper and see if he has cross. All right? So

1 please don't test my patience any more. Five minutes to
2 finish.

3 MR. DRAPER: Judge, I have no questions.

4 THE COURT: I didn't hear you, Mr. Draper. What did
5 you say?

6 MR. DRAPER: I have no questions.

7 THE COURT: All right. Very good.

8 MR. WILSON: I apologize, Your Honor. I was actually
9 trying to be respectful of your time when I informed you that
10 I had at least ten more minutes left at 12:50, but I will try
11 to be as expedient as I can as I finish up.

12 BY MR. WILSON:

13 Q And I don't see you on my screen.

14 MR. WILSON: You can take that document down.

15 THE WITNESS: Here.

16 BY MR. WILSON:

17 Q Mr. Pugatch, do you have an opinion as to what caused
18 these incredible losses of value at HCLOF?

19 MS. WEISGERBER: Objection to the extent it calls for
20 a legal conclusion.

21 THE COURT: Overruled. He can answer.

22 THE WITNESS: I would say that there's no one cause
23 for the decline in value. I can point to a number of
24 different things, including the exorbitant fees that were
25 charged to HCLOF, including the inability to be able to re --

1 refinance the CLOs on the part of HCLOF, all of which stems
2 from the actions that Highland took prior to our investment in
3 HCLOF.

4 BY MR. WILSON:

5 Q And you've -- I think it's been referenced several times
6 in HarbourVest's arguments that -- that the reset was a
7 fundamental -- the inability to get a reset was a fundamental
8 cause of the loss in value. Is that -- is that HarbourVest's
9 position?

10 A That -- that is a part of the -- the cause in the
11 declining value of the CLOs, yes.

12 Q And you would agree with me that a reset is fundamentally
13 a reset of interest rates, correct?

14 A Of the interest rates of the liabilities of the -- the
15 timing for repayment of those liabilities, yes.

16 Q Now, just say with -- for the sake of a hypothetical
17 example. If you had a home that was valued at \$5 million, or
18 let's just say \$500,000, let's make it more realistic. If you
19 had a \$500,000 home and you had a mortgage on that home at
20 five percent interest, your inability to refinance that home
21 at a lower interest rate would not affect the underlying value
22 of that home, correct?

23 MS. WEISGERBER: Objection, Your Honor. Hypothetical.
24 And objection to relevance as well.

25 THE COURT: Sustained.

1 MS. WEISGERBER: Calls for speculation.

2 THE COURT: Sustained.

3 BY MR. WILSON:

4 Q Is there any reason to believe that the change in the
5 interest rate would have prevented the massive losses of
6 investment value that occurred in HCLOF?

7 MS. WEISGERBER: Object on the same grounds.

8 THE COURT: Sustained.

9 THE WITNESS: The short -- the short answer is yes,
10 with a -- with the amount of leverage --

11 MS. WEISGERBER: I --

12 THE WITNESS: -- that exists. Oh, sorry.

13 MS. WEISGERBER: The objection was sustained.

14 THE COURT: Yeah, I sustained the objection. That
15 means you don't answer.

16 THE WITNESS: I'm sorry, Your Honor.

17 BY MR. WILSON:

18 Q So, would you agree with me that if the expenses and the
19 fees charged by the portfolio manager increased dramatically,
20 that would -- that would impact the value of the investment,
21 correct?

22 MS. WEISGERBER: Objection on the same grounds, and
23 relevance. This is a 9019 hearing, Your Honor. We are not
24 here to try every minutia. And in fact, we're trying to avoid
25 a trial on the merits. And it feels like we're getting a bit

1 far afield now.

2 THE COURT: I sustain.

3 MR. WILSON: All right. I'll pass the witness.

4 THE COURT: All right. Mr. Draper said he had no
5 cross. So, any redirect, Ms. Weisgerber?

6 MS. WEISGERBER: No, Your Honor.

7 THE COURT: All right. Mr. Morris, did you have any
8 redirect?

9 MR. MORRIS: I do not, Your Honor. I have a very
10 brief closing and then some additional remarks if -- if we
11 finish.

12 THE COURT: All right. So, Mr. Pugatch, that
13 concludes your testimony. Thank you. You're excused if you
14 want to be.

15 All right. So, as I understood it, there would be no more
16 evidence after this.

17 MR. WILSON: Well, Your Honor, along those lines, as
18 a housekeeping measure, I think everything on my exhibit list
19 is included on someone else's exhibit list, but just for belt
20 and suspenders I would move to admit all of the exhibits on
21 the -- on Mr. Dondero's exhibit list.

22 THE COURT: Well, is that agreed or not? Because we
23 didn't have a witness to get them in.

24 MR. MORRIS: No objection, Your Honor.

25 THE COURT: Any objection? All right. If there's no

1 objection, I'll --

2 MR. MORRIS: Your Honor, --

3 THE COURT: I'm sorry. Was there an objection? I
4 will admit Dondero Exhibits A through M, and those appear at
5 Docket Entry 1721, correct, Mr. Wilson?

6 MR. WILSON: That is correct, Your Honor.

7 THE COURT: All right.

8 MR. WILSON: That is correct, Your Honor.

9 (James Dondero's Exhibits A through M are received into
10 evidence.)

11 MR. WILSON: And one final matter is, during the
12 examination of Mr. Seery, you at least partially admitted
13 Dondero's Exhibit N, and I was wondering if we need to -- how
14 we'd need to submit that for the record.

15 THE COURT: Okay. First, I'm confused. I think you
16 said Mr. Terry's testimony. You --

17 MR. WILSON: I said Seery. I'm sorry.

18 THE COURT: Oh, Seery?

19 MR. WILSON: Or I may have said Terry, but I meant to
20 say Seery.

21 THE COURT: Okay. Maybe you said it. Okay. During
22 Mr. Seery's testimony -- oh, the email that I admitted a
23 portion of?

24 MR. WILSON: That is -- that's correct, Your Honor.

25 THE COURT: What -- what are you asking? It's not in

1 your notebook. Are you asking do you need to separately
2 submit it or what?

3 MR. WILSON: Yeah, I was just asking what the Court's
4 preference on how we submit that for the -- put it in the
5 record.

6 THE COURT: Okay. That was so garbled I didn't hear
7 you. You need to file that on the docket as a supplemental
8 exhibit that was admitted, okay?

9 MR. WILSON: Okay. Thank you, Your Honor.

10 THE COURT: All right. Closing arguments? Mr.
11 Morris?

12 CLOSING ARGUMENT ON BEHALF OF THE DEBTOR

13 MR. MORRIS: Yes, very briefly, Your Honor. The
14 Debtor easily meets the standard here. The settlement
15 consideration relative to the claim establishes and reflects
16 the likelihood of success on the merits.

17 You know, I've never -- I did hear Mr. Pugatch in the
18 deposition the other day, but I otherwise haven't heard from
19 him. I found him to be incredibly credible, Your Honor, and I
20 regret the fact that he and HarbourVest are being blamed twice
21 here. The fact that they got 40,000 documents or didn't read
22 the arbitration award, it's just -- it's a shame that they're
23 being dragged through this yet again.

24 The fact is, Your Honor, there is no evidence that they
25 made the disclosures that HarbourVest claims -- complains

1 about. They just don't. The fraudulent transfers led to the
2 bankruptcy, led to the appointment of a trustee, led to --
3 right? So, so it's -- that's why -- but they're getting
4 something for their claim.

5 It was a hard negotiation, Your Honor. There is no
6 dispute that if we litigated this it would be complex. It
7 would fact-intensive. The Debtor would be forced to rely upon
8 witnesses who are no longer employed by it. That it would be
9 expensive, for sure. There's no dispute about any of that.
10 There's no dispute that the creditor body has spoken loudly
11 here by unanimously refraining from objecting except for Mr.
12 Dondero and the entities controlled by him.

13 And you heard Mr. Seery's testimony. I think he
14 exhaustively informed the Court as to the process by which the
15 transaction was analyzed and negotiated, and there's no
16 evidence to the contrary that this was an arm's-length
17 negotiation.

18 Unless Your Honor has any questions, we would request that
19 the motion be granted.

20 THE COURT: Thank you. Ms. Weisgerber, your closing
21 argument?

22 CLOSING ARGUMENT ON BEHALF OF HARBOURVEST

23 MS. WEISGERBER: Sure. Thank you, Your Honor. I'll
24 also be brief. We again join in Mr. Morris's arguments and
25 comments.

1 The Court has now heard testimony from Mr. Pugatch
2 regarding the factual detail underlying HarbourVest's claims.
3 The Court has also heard about the significant damages that
4 HarbourVest stands to recover for those claims. And
5 HarbourVest came to this Court ready to litigate. It would --
6 it's ready to do so if needed. It believes it would prevail
7 on its claims if it had to do so.

8 But the Court also heard from Mr. Seery about his
9 understanding of HarbourVest's claims, his calculus, and his
10 decision to settle them. And we submit that nothing further
11 is needed by this Court in order to approve the settlement.
12 This is a question of the Debtor's business judgment. We're
13 not here to have a trial on the merits of HarbourVest's
14 claims. The Objectors have made various arguments, including
15 about the cause of HarbourVest's damages. But even the nature
16 of the legal claims that HarbourVest is asserting, some do not
17 require a loss causation. So we submit that's not even
18 relevant to the merits of the claims.

19 The settlement is clearly in the best interest of the
20 estate, and we respectfully request that the Court approve it.

21 THE COURT: Thank you. All right. Mr. Wilson, your
22 closing argument?

23 MR. LYNN: Michael Lynn. I will give the closing
24 argument, if that's satisfactory to the Court.

25 THE COURT: All right. Go ahead.

1 CLOSING ARGUMENT ON BEHALF OF JAMES DONDERO

2 MR. LYNN: Good afternoon, Your Honor. I just want
3 to make a few points, and I'll try to do it as quickly as
4 possible.

5 First, I feel compelled to address the argument of the
6 Debtor that Mr. Dondero is repeating his litigious behavior
7 from the Acis case. I don't know about the Acis case. I
8 wasn't involved except very, very peripherally. But with
9 respect to this case, we have only taken positions in court
10 that we believed -- that is, his lawyers -- believed were
11 warranted by law, facts as we knew them, and that are
12 consistent with professionalism. I'd be glad to explain any
13 position we took.

14 Often, through the Debtor's very persuasive powers, we
15 never had the chance to explain our position previously to the
16 Court. In fact, for the most part, as today, we have been
17 reactive rather than commencing proceedings. In fact, during
18 the first seven months of this case, we only appeared in court
19 a few times, when we felt we had to -- for example, when
20 discovery was being sought by the Creditors' Committee that we
21 feared might invade privilege. Then, much to the Debtor's
22 fury, we opposed the Acis 9019. We did so because we thought
23 it was too much.

24 Since, as the Court can see, the principal instigators of
25 litigation have been the Debtor, and to a lesser extent, the

1 Committee.

2 Indeed, in an apparent effort to drown Mr. Dondero and his
3 counsel in litigation, the Debtor has repeatedly sought court
4 action on a very short fuse, claiming need for expedited
5 hearing.

6 Perhaps the most startling example of this is the recent
7 contempt motion, for which there is no good reason for a quick
8 hearing. Resolution of that motion is not necessary to reach
9 the confirmation hearing. The motion could be heard after the
10 confirmation hearing. There is no need to put Mr. Dondero and
11 his professionals in a position where they have to respond in
12 a couple of days, two business days, and then will have two
13 days to prepare for trial.

14 Second, Your Honor, Mr. Seery has repeatedly asserted,
15 contrary to today's motion, that the HarbourVest claim was of
16 no merit. That is why, when he came in to settle for tens of
17 millions of dollars, we opposed this motion. It appears that
18 the motion is occurring without any cross-party discovery.
19 There is no consideration, apparently, of trying dispositive
20 -- dispositive motions first. There is no consideration for
21 junior classes of equity, which Mr. Seery has previously
22 opined were in the money. This, even though there's no reason
23 that this settlement is necessary pre-confirmation, unless Mr.
24 Seery wants HarbourVest's vote.

25 Third, for whatever reason, that seems to be the driving

1 factor for settling. On its face, the vote seems to be a key
2 factor of the settlement. About the longest provision of the
3 settlement agreement relates to voting. The motion itself --
4 in the motion itself, five of seven bullet points cited by the
5 Debtor for approval of the settlement deal with and emphasize
6 support of the plan or the vote that is to be cast for the
7 plan.

8 If the settlement is a good deal, it didn't need to have
9 as one of its parts the requirement that HarbourVest vote for
10 the plan.

11 Your Honor, I'll stop there. I know Your Honor would like
12 to get just a few minutes before your 1:30 docket. I've been
13 there and I understand that, and I do apologize for taking the
14 time we have, but I think that responsibility is shared with
15 the Debtor and HarbourVest.

16 Thank you, Your Honor.

17 THE COURT: All right. Thank you for that.

18 Mr. Draper, any closing argument from you?

19 CLOSING ARGUMENT ON BEHALF OF GET GOOD AND DUGABOY TRUSTS

20 MR. DRAPER: Yes, I have three comments. The first
21 is the claim -- the loss claim, absent the fraud claim, is, at
22 best, \$7 million. I think Mr. Seery's argument that a hundred
23 -- one hundred percent is attributable to there is just wrong.
24 If he and I both invested in a company 50-50 and it goes
25 broke, we only lost 50 cents each.

1 Number two, I think the Court heard the evidence. I think
2 this is, at best, a subordinated claim under 5 -- under the
3 Bankruptcy Code. It's really a "But for the
4 misrepresentations, we wouldn't have invested."

5 And the last one is the -- Judge Lynn represented the
6 voting, so I won't deal with that. But the one that troubles
7 me the most is the fact that this asset that is ultimately
8 being paid for in claim dollars that's being transferred over
9 to the Debtor and being put it outside the estate, outside the
10 purview of this Court, and placed in some subsidiary, this --
11 this transaction, if it is approved, must -- should contain a
12 provision that the asset that's being acquired come into the
13 Debtor and be owned by the Debtor.

14 THE COURT: All right.

15 MR. DRAPER: I have nothing further, Your Honor.

16 THE COURT: Thank you, Mr. Draper.

17 Mr. Morris, you get the last word since it's your motion.

18 MR. MORRIS: Very quickly, Your Honor. The
19 subordination argument doesn't hold water. This is not a
20 claim against the Debtor for the security; it's a claim for
21 fraud. Okay? So, so 510(b), if it was a claim against HCLOF,
22 that might make sense, but this is a claim against the Debtor.
23 And it's a Debtor -- it's a claim for fraud. That's number
24 one.

25 Number two, we need to keep this exactly as it's been

1 structured in order to avoid litigation. Mr. Seery told the
2 Court. I'm sure the Court can make its own assessment as to
3 Mr. Seery's credibility as to whether or not the Debtor is
4 intending to somehow get this asset beyond the Court.

5 But there are reasons why we've done this, Your Honor.
6 They could have made an objection on that basis. In fact, if
7 they did, it would be overruled, because there's no -- there's
8 no basis for this Court to find that somehow the Debtor and
9 Mr. Seery are doing something untoward to get assets away from
10 this Court's jurisdiction.

11 You know, I don't know what to say about Mr. Lynn's
12 commentary. Much of it had nothing to do with any evidence in
13 the record.

14 The fact remains, Your Honor, that this settlement is
15 fair. It's reasonable. It's in the best interest of the
16 estate. And we would respectfully request that the Court
17 grant the motion.

18 THE COURT: All right. Thank you. Well, I
19 appreciate all the arguments and evidence I have heard today.
20 I'm going to be brief in my ruling here, but I reserve the
21 right to supplement in a more fulsome written order, which I'm
22 going to instruct Mr. Morris to submit. I am approving the
23 motion to compromise the HarbourVest claim today, and I guess
24 subsumed in that is granting the motion to allow their claim
25 for 3018 voting purposes.

1 I in all ways find this compromise to meet the required
2 legal standard set forth in such cases as *TMT Trailer Ferry*,
3 *AWECO*, and *Foster Mortgage*, numerous other Fifth Circuit
4 cases.

5 First, I'm going to specifically say for the record that I
6 found both witnesses today, Mr. Seery and Mr. Pugatch, to be
7 very credible. Very credible testimony and meaningful
8 testimony was provided to the Court today. And based on that
9 testimony, I find, first, that this compromise was the product
10 of arm's-length negotiations. It was a hard-fought
11 negotiation, as far as I'm concerned. The Debtor objected to
12 these numerous HarbourVest proofs of claim. The Debtor did
13 not want to allow HarbourVest a significant claim for voting
14 purposes. I duly note the statements made in the disclosure
15 statement before this compromise was reached suggesting, you
16 know, the Debtor didn't think HarbourVest should have a large
17 claim.

18 That is consistent with everything I typically see in a
19 bankruptcy case when there's a claim objection. The objector
20 vehemently denies the claimant should have a proof of claim,
21 and then people sit down and think about the risks and rewards
22 of litigating things. And I believe very fervently that's
23 what happened here. There were good-faith, arm's-length
24 negotiations that resulted in this proposed compromise.

25 I find the compromise -- and I'll add to that point, on

1 the good-faith point, I find nothing sinister or improper
2 about the fact that the compromise includes a commitment of
3 HarbourVest to vote in favor of the plan. Again, we see this
4 a lot. You know, there's even a buzz word that doesn't even
5 exist in the Bankruptcy Code: "plan support agreement." You
6 know, we see those a lot -- you know, oftentimes negotiated
7 before the case, but sometimes after. You know, it may be
8 improper in certain situations, but there was nothing here
9 that troubles me about that component of the compromise.

10 I find the compromise to meet the paramount interest of
11 creditors here. Notably, we have very large creditors in this
12 case who have not objected. The *Foster Mortgage* case from the
13 Fifth Circuit tells me I am supposed to consider support or
14 opposition of creditors. No opposition of UBS. No opposition
15 of the Redeemer Committee Crusader Fund. No opposition from
16 Josh Terry or Acis. No opposition from Daugherty.

17 But moreover, when considering the paramount interest of
18 creditors, I find this compromise to be in all ways fair and
19 equitable and in the best interest of the estate, and
20 certainly within the range of reasonableness. The evidence
21 showed that HarbourVest asserted over \$300 million. Over \$300
22 million. Granted, that was based on all kinds of legal
23 theories that would be contested and expensive to litigate,
24 but the evidence also showed that they invested over \$70
25 million. You know, close to \$75 million. I forget the exact

1 number. \$75 or \$80 million, somewhere in that range. And now
2 the credible evidence is that investment is worth about \$22
3 million.

4 So, certainly, while the claim may not have, at the
5 ultimate end of the day in litigation, resulted in a \$300
6 million proof of claim, certainly, certainly there were strong
7 arguments for a very sizeable claim, more than this compromise
8 amount. So it's certainly fair and equitable and reasonable
9 when considering the complexity and duration of further
10 litigation, the risks and rewards, the expense, delay, and
11 likely success.

12 A couple of last things I'm going to say are these. I
13 understand, you know, there is vehement disagreement on the
14 part of our Objectors to the notion that Highland might have
15 caused a \$50 million loss to HarbourVest. But I will tell
16 you, for what it's worth -- I want the record clear that this
17 is part of my evaluation of the reasonableness of the
18 settlement -- my reaction is that, indeed, Highland's
19 litigation strategy in the Acis case caused HCLOF to lose a
20 huge portion of its value, to the detriment of HarbourVest.
21 You know, whether all evidence at the end of the day would
22 convince me of that, I don't know, but that's -- that is
23 definitely this judge's impression.

24 I'm very sympathetic to HarbourVest. It appears in all
25 ways from the record, not just the record before me today, but

1 the record in the Acis case that I presided over, that
2 Highland back then would have rather spent HarbourVest's
3 investment for HCLOF legal fees than let Josh Terry get paid
4 on his judgment. They were perfectly happy to direct the
5 spending of other people's money, is what the record suggested
6 to me.

7 And then, you know, I have alluded to this very recently,
8 as recently as last Friday: I can still remember Mr.
9 Ellington sitting on the witness stand over here to my left
10 and telling the Court, telling the parties under oath, that
11 HarbourVest -- he didn't use its name back then, okay? For
12 the first phase of the Acis case, or most of the Acis case, we
13 were told it was an investor from Boston. And at some point
14 someone even said their name begins with H. I mean, it seemed
15 almost humorous. But Mr. Ellington said it was they,
16 HarbourVest, the undisclosed investor, who was insistent that
17 the Acis name was toxic, and so that's what all of this had
18 been about: the rebranding, the wanting to extract or move
19 things away from Acis.

20 So, you know, I have heard for the -- well, at least the
21 second time today, from Mr. Pugatch, what I perceive to be
22 very credible testimony that that's just not the way it
23 happened.

24 And I guess the last thing I want to say here today, and
25 you know, I guess I have multiple reasons for saying this, not

1 just in connection with approving the settlement, you know,
2 I've heard about how the Acis CLOs, the HCLOF CLOs have lost,
3 you know, a crazy amount of value, that they underperform in
4 the market, that, you know, during the Acis/Brigade tenure
5 and, you know, they should have been reset. You know, I hope
6 those who have not been around as long as some of us in this
7 whole saga know that the -- Mr. Terry, Mr. Phelan, I think
8 Brigade, they all desperately wanted to reset these things,
9 but it was HCLOF, I believe directed by Highland, that wanted
10 to redeem, wanted to liquidate, take the pot of money,
11 warehouse it, and then do their own thing.

12 And there was, I think, from my vantage point, a
13 monumental effort to try to get everyone to the table to do
14 reasonable resets that would be good for the stakeholders at
15 HCLOF and be good for the creditors of Acis, including Josh
16 Terry. That was always the balancing act that most of us were
17 focused on during the Acis bankruptcy. But Highland, I
18 believe, directing HCLOF's strategy, just did not want the
19 resets to happen.

20 So, again, part of me, I suppose, just wants to make the
21 record clear on something that I fear not everyone is clear
22 about. And I say that because the comment was made that the
23 injunctions, the preliminary injunctions sought by the Acis
24 trustee caused the plummet in value, and I think that's just
25 not an accurate statement. I think litigation strategies are

1 what caused the plummet in value, and that's why I think
2 ultimately HarbourVest would potentially have a meritorious
3 claim here in a significant amount if this litigation were to
4 go forward.

5 So, I approve this under 9019. And again, Mr. Morris,
6 you'll upload an order.

7 It is now 1:41, so let's as quickly as possible hear the
8 other motion that I don't think had any objections. Mr.
9 Morris?

10 MR. MORRIS: Your Honor, just -- yes, just very
11 quickly, just four things.

12 With respect to the order, I just want to make it clear
13 that we are going to include a provision that specifically
14 authorizes the Debtor to engage in -- to receive from
15 HarbourVest the asset, you know, the HCLOF interest, and that
16 that's consistent with its obligations under the agreement.

17 The objection has been withdrawn, I think the evidence is
18 what it is, and we want to make sure that nobody thinks that
19 they're going to go to a different court somehow to challenge
20 the transfer. So I just want to put the Court on notice and
21 everybody on notice that we are going to put in a specific
22 finding as to that.

23 THE COURT: All right. Fair --

24 MR. MORRIS: Number two is --

25 THE COURT: Fair enough. I do specifically approve

1 that mechanism and find it is appropriate and supported by the
2 underlying agreements.

3 And just so you know, I spent some time noodling this
4 yesterday before I knew it was going to be settled, so I'm not
5 just casually doing that. I think it's fine.

6 Okay. Next?

7 MR. MORRIS: Thank you very much, Your Honor. Number
8 two, with respect to the motion to pay, there is no objection.
9 If we can just submit an order. Or if Your Honor has other
10 guidance for us, we're happy to take it.

11 THE COURT: Okay. Does anyone have anything they
12 want to say about that motion?

13 Again, I looked at it. I didn't see any objections. I
14 didn't see any problem with it. It's -- you know, you're
15 going through this exercise because of the earlier protocol
16 order.

17 MR. MORRIS: Correct.

18 THE COURT: All right. Well, if there's nothing,
19 then, I will approve that, finding there is good cause to
20 grant that motion.

21 MR. MORRIS: Okay.

22 THE COURT: All right. Is the only other
23 housekeeping matter --

24 MR. MORRIS: I --

25 THE COURT: -- we have the contempt motion?

1 MR. MORRIS: It is, and I do -- I do have to point
2 out how troubled the Debtor is to learn that Mr. Dondero was
3 still receiving documents from Highland as late as this
4 morning. It's got to be a violation of both the TRO -- I
5 guess it's now the preliminary injunction.

6 I would respectfully request -- I know that time is what
7 it is -- but maybe Mr. Dondero can answer now where he got the
8 document, who he got the document from, what other documents
9 he's gotten from the Debtor since Your Honor ordered him not
10 to communicate with the Debtor's employees.

11 This is not saying hello in the hallway. I mean, this is
12 just -- it is really troubling, Your Honor, and it's why we
13 need the contempt motion heard as soon as possible.

14 THE COURT: Well, Mr. Wilson, do you want to address
15 that? I think the words I heard were that you just got the
16 document this morning, and you got it from Mr. Dondero, but we
17 don't know where and when Mr. Dondero got it. Mr. Wilson, are
18 you there?

19 MR. LYNN: I'm afraid I'm back, Your Honor.

20 THE COURT: Okay.

21 MR. LYNN: I am not sure whether Mr. Dondero had it
22 in his files from some -- from back before he was asked not to
23 communicate with members or with employees of the Debtor. I
24 believe -- I believe he's with us, though I don't think he's
25 available by video.

1 Are you there, Mr. Dondero?

2 THE COURT: We can't hear you, Mr. Dondero.

3 MR. DONDERO: Judge?

4 THE COURT: Oh, go ahead.

5 MR. DONDERO: Can you hear me now?

6 THE COURT: Yes.

7 MR. DONDERO: Yes, I -- I -- when I moved offices, I
8 found it in a stack of paper, and --

9 MR. LYNN: I understand it shows that his microphone
10 is working.

11 THE COURT: Okay. Go ahead.

12 MR. DONDERO: Can you hear me?

13 THE COURT: Yes, go ahead.

14 MR. DONDERO: Yeah, I -- I'm sitting in new offices.
15 I've got everything in boxes. I was going through everything
16 yesterday, and I found those emails in a stack of papers and I
17 sent them over because I thought they would be relevant
18 relative to Seery's initial impression.

19 THE COURT: Okay. Well, let's talk about the timing
20 of this hearing. Mr. Morris, I'm going to -- I'm going to ask
21 you why --

22 MR. LYNN: Michael Lynn, Your Honor. I don't want to
23 waste the Court's time. We have not made available anything
24 to the Court objecting to the expedited hearing on the
25 contempt motion. We've been here.

1 I would say to Your Honor that if Mr. Dondero is indeed in
2 contempt, or was in contempt toward the motion, which has
3 nothing to do with the document that was presented as Dondero
4 Exhibit N, there is no need to hear this on an expedited
5 basis.

6 Every time we turn around, Your Honor, the Debtor is
7 asking that something be heard on an expedited basis. And we
8 have not opposed that. We have not fought that, to speak of,
9 to date. But this is getting a little ridiculous. We're
10 within days of confirmation of the Debtor's plan, and it is
11 simply a means of causing pain and suffering to Mr. Dondero
12 and those who are working with him and for him. And he does
13 have employees at NexPoint who are assisting him.

14 So we most strongly object to being put on a schedule
15 where we are expected to get a response to the contempt motion
16 on file by Monday, today being Thursday, and a weekend
17 intervening. And we strongly object to any setting of this
18 contempt motion on Tuesday or Wednesday. It is absurd, and it
19 is done solely, solely, Your Honor, to cause pain.

20 THE COURT: All right.

21 MR. MORRIS: Your Honor, if I may?

22 THE COURT: Please.

23 MR. MORRIS: Just very briefly, we had a hearing the
24 other day. The evidence is the exact same. The evidence is
25 crystal clear that the violations are meaningful, they're

1 substantial, and they are repeated.

2 After the TRO was entered into, Mr. Dondero and only Mr.
3 Dondero chose to interfere with the Debtor's business. Mr.
4 Dondero and only Mr. Dondero chose to communicate with the
5 Debtor's employees, not about saying hello in the hallway but
6 about coordinating a legal defense strategy against the
7 Debtor.

8 The need is immediate, Your Honor, and I would
9 respectfully request that the hearing be set for Tuesday or
10 Wednesday. They've had this motion now since the 7th of
11 January. They had a full evidentiary hearing, so they know
12 most of the evidence that's going to be presented. They have
13 a whole team of -- they have an army of lawyers, Your Honor,
14 and half a dozen firms working on behalf of Mr. Dondero and
15 his interests. For him to cry here, for him to cry that this
16 is too much is really -- it's obscene. It just is.

17 THE COURT: All right. I'm going to say a couple --

18 MR. LYNN: That is absurd.

19 THE COURT: I'm going to say a couple of things. One
20 is that I -- well, the one time I remember getting reversed
21 for holding someone in contempt of court, the District Court
22 felt like I had not given enough notice of that. The District
23 Courts, what they think is reasonable notice, is sometimes
24 very different from what the bankruptcy judges think. We're
25 used to going very lickety-split fast in the bankruptcy

1 courts. And the Courts of Appeals, District Court, Courts of
2 Appeals obviously, for good reason, are very concerned about
3 due process in this kind of context. So I'm sensitive to
4 that.

5 I'm also sensitive to the fact that it is monetary damages
6 that are being sought here to purge the contempt. Okay? The
7 shifting of attorneys' fees is basically what I understand is
8 being sought at this point. You know, we have a preliminary
9 injunction halting behavior at this point, and so I think
10 that's another reason I'm hesitant to give an emergency
11 hearing. I feel like monetary damages can wait and we can
12 give 21-plus days' notice of the hearing.

13 But I'm going to throw this out there as well. If I do
14 feel like there is a showing of contempt, if I do feel like
15 the phone -- as I told you the other day, I'm very, very
16 fixated on the phone that may have been destroyed or thrown
17 away, maybe at Mr. Dondero's suggestion. I mean, the
18 potential monetary sanction here may be very, very large if
19 the evidence plays out in the way I fear it might play out.
20 So I need to make sure everybody has adequate time to prepare
21 for that hearing and make sure I get all the evidence I need
22 to see. All right? Contempt of court is very, very, very,
23 very serious, and I don't think anyone would deny that.

24 So, with that, it was filed what day? January 4th? Is
25 that what I heard? Or --

1 MR. MORRIS: January 7th, I believe, Your Honor.

2 THE COURT: January 7th? All right. Well, Traci,
3 are you there? Hopefully, you're not in a hunger coma at this
4 point.

5 THE CLERK: I am here.

6 THE COURT: Okay. We have -- we're going to have to
7 go to that first week of February, right? Because we've got
8 the confirmation hearing that, you know, late in January, and
9 then --

10 THE CLERK: Yes. Uh-huh.

11 THE COURT: Okay. Do you have an available date to
12 give right now?

13 THE CLERK: How about -- if you're willing to hear
14 them on Friday, February 5th.

15 THE COURT: Okay. I can do that. February 5th at
16 9:30. Any -- anybody want to argue about that?

17 MR. MORRIS: Thank you, Your Honor. That's
18 acceptable to the Debtor.

19 THE COURT: Okay. Mr. Lynn, is that good with you?

20 MR. LYNN: We'll do that, Your Honor. I would say,
21 by the way, that I'll be happy to buy Mr. Seery, out of my own
22 pocket, five cell phones, which ought to make up for the one
23 that was lost, though I recognize that those cell phones will
24 not have on them the privileged information, the conversations
25 between his lawyers and Mr. Dondero that I imagine he was

1 looking forward to seeing.

2 THE COURT: Well, I wouldn't want him to see that
3 information, but I do think he's entitled to any nonprivileged
4 information, texting, or calls that are on that phone. So,
5 again, I'm either going to hear good explanations for that or
6 not, but it's something very concerning to me.

7 All right. So we have a game plan.

8 I'm going to ask, Did we have good-faith negotiations
9 between Dondero and the Committee and anything positive to
10 report? I'll ask Mr. Lynn and Mr. Clemente to weigh in.

11 MR. CLEMENTE: Yes, Your Honor. I'll go first, Your
12 Honor. Mr. Lynn and I have exchanged several emails over the
13 weekend, and the message that I sent to Mr. Lynn was very
14 clear. There had been a term sheet that Mr. Seery had sent
15 back to Mr. Dondero. I had asked Mr. Lynn to take a pencil
16 out and be very specific as to what it was Mr. Dondero was
17 prepared to do in connection with the pot plan. I instructed
18 him that some of the issues that the Committee still has is
19 obviously the overall value, along with the concept that's
20 signing up to a promise from Mr. Dondero to comply with
21 (indiscernible) as part of that value. As Your Honor may
22 understand, the Committee is obviously very skeptical of Mr.
23 Dondero's future performance under an agreement that he enters
24 into.

25 Those are but a couple of issues, Your Honor, that I

1 advised Mr. Lynn were very concerning to the Committee. And I
2 suggested to him that if he wanted to move things forward, the
3 best way to do it would be to come to us with a fulsome term
4 sheet that explained exactly what it was in clear and precise
5 detail that Mr. Dondero was proposing, and that would be the
6 best way to move the process forward, Your Honor.

7 THE COURT: All right. Mr. Lynn, anything to add to
8 that?

9 MR. LYNN: Well, Your Honor, my experience in
10 negotiations is that it is useful to agree on substantive
11 terms, or at least be in the ballpark, before term sheets are
12 exchanged. Long ago, a term sheet was prepared and presented
13 to the Committee. Ultimately, I think it was rejected, though
14 I don't know if we ever received a formal rejection.

15 I explained in my emails, which I'm happy to share with
16 the Court if Your Honor wants to see them, why I was reluctant
17 to try to put into a term sheet form the proposal that I
18 suggested to Mr. Clemente. As I said, I'm more than happy to
19 provide you with that email chain and let you form your own
20 judgment, Your Honor, as to whether we're proceeding in good
21 faith.

22 THE COURT: All right. Well I'm not going to ask --

23 MR. POMERANTZ: Your Honor? Your Honor, this is Jeff
24 Pomerantz.

25 THE COURT: -- to see any of that. Mr. Pomerantz?

1 MR. POMERANTZ: May I just be heard real quickly?

2 THE COURT: Sure.

3 MR. POMERANTZ: Your Honor, we also took Your Honor's
4 comments to heart. We, Mr. Seery and I, had an over-an-hour
5 conversation with Mr. Lynn and with Mr. Bonds. We provided
6 them with our thoughts as to what they needed to do in order
7 to move forward. Of course, it's not really the Debtor to
8 agree. It's the creditors to agree. But as Mr. Seery has
9 testified many times before and as I have told the Court, we
10 would support a plan that the Committee and Mr. Dondero could
11 get behind.

12 So we again -- I'm not going to divulge the nature of
13 those communications, but we suggested several things that Mr.
14 Dondero could do in order to move the ball forward, and
15 unfortunately, we have not seen any of those things done thus
16 far. So we are, at this point, not optimistic that there will
17 be a grand bargain plan.

18 THE COURT: All right.

19 MR. DONDERO: Your Honor, could I comment for a
20 second? This is Mr. Dondero.

21 THE COURT: If you and your counsel want you to
22 comment, you can comment.

23 MR. DONDERO: I'd love to do a pot plan. I would
24 love to reach some kind of settlement and everybody move on
25 with their lives. The estate started with \$360 million of

1 third-party assets and \$90 million of notes. The \$360 million
2 of third-party assets are down to \$130 million.

3 MR. POMERANTZ: Again, Your Honor, I must interrupt.
4 I did this at the last hearing, and it's not my practice to
5 interrupt, but issues regarding what the value is or not, it's
6 going to require a response, and that's not really before Your
7 Honor. I think before Your Honor is --

8 MR. DONDERO: Okay.

9 MR. POMERANTZ: -- have there been negotiations?
10 Have they been in good faith? If Mr. Dondero wanted to
11 address that, that's fine, but I object to having any
12 discussion at this point, especially with Mr. Dondero not even
13 under oath, on what the nature of the value of the assets and
14 why they have changed and what not.

15 THE COURT: Well, --

16 MR. POMERANTZ: It's just not appropriate.

17 THE COURT: I understand --

18 MR. DONDERO: Okay. Can I --

19 THE COURT: Stop.

20 MR. DONDERO: Can I -- can I finish?

21 THE COURT: Let me please respond to that. I
22 understand your concern, but I've heard from Mr. Seery
23 testimony many months ago about the value plummeting during
24 the case. And I asked why, and I got some explanations. This
25 is not evidence. This is just, you know, this is not going to

1 be binding in any way. Mr. Dondero can speak as to what he
2 thinks, you know, the situation is.

3 Go ahead, Mr. Dondero.

4 MR. DONDERO: Okay. I'm not trying to fixate on the
5 numbers. And as far as the third-party assets are, we would
6 be willing to pay -- I would be willing to pay for those. I'd
7 be willing to pay more, and even some value for the affiliate
8 notes that were really part of compensation agreements
9 throughout the history of Highland and avoid the POC
10 arguments. I'd be willing to pay for the assets and I'd be
11 willing to pay even more than that.

12 I have no transparency in terms of what the assets are,
13 and there's no fulsome discussion in terms of, well, here are
14 the assets, here are the notes, here's what we think the
15 values are, can you get to this number? It's just a -- you --
16 the -- it -- I don't view there is good-faith negotiations
17 going on because it's always just a: You need to put a big
18 number on a piece of paper; otherwise, you're going to get run
19 over.

20 And there's no back and forth going on, but it's not due
21 to a lack of willingness on my part. And maybe there needs to
22 be a committee set up. Maybe there needs to be, I don't know,
23 a mediator or an examiner or somebody to try and push through
24 the pot plan, but there's nothing happening. People are not
25 returning the judge's calls, I mean, Mr. Lynn's calls, or my

1 calls. They're -- there's -- despite efforts of our -- of my
2 own and a willingness of my own, there's no negotiations of
3 any sort going on at the moment.

4 THE COURT: All right. I don't want anyone to
5 respond to that. I know people have different views of what's
6 going on. But let me just say a couple of things, and then
7 we're done.

8 We do have a Committee in this case. We have a Committee
9 with very sophisticated members and very sophisticated
10 professionals. Okay? That's who I wanted you to be talking
11 to before the end of the day Tuesday.

12 We have had co-mediators in this case. Okay? And, you
13 know, I identified very sophisticated human beings for that
14 role. Okay? And in fact, there ended up being settlements
15 that flowed out of the co-mediator process.

16 We're now 15 months into the case. There are major,
17 significant compromises now: HarbourVest, UBS, Acis, Terry,
18 and Redeemer Committee. I hate to use a worn-out metaphor,
19 but the train is leaving the station. We've got confirmation.
20 I've pushed out two weeks. I mean, you all are either going
21 to get there in the next few days or we're just going to go
22 forward with I think what everyone, you know, would rather be
23 a pot plan, but if we can't get there, we're just going to
24 have to consider the plan that's on the table now. Okay?

25 You know, the Committee, again, they're sophisticated.

1 They can compare apples to oranges and decide whether the plan
2 on the table, with its risks of future litigation and
3 recoveries, whether it's better or worse than whatever
4 consideration you're offering, Mr. Dondero.

5 And you know, as we all know, there is distrust here,
6 there, and everywhere among these parties. So I can totally
7 understand them, you know, taking a hard line: We either get
8 all cash or we're just not going to mess with it. We don't
9 want to risk broken promises. We'd rather just do litigation.

10 So, anyway, that's as much as I'm going to say except I am
11 going to further direct good-faith negotiations. It sounds
12 like to me a written term sheet might be the appropriate next
13 step, given where I've heard things are at the moment. But,
14 you know, I guess we don't have any hearings between now and
15 the 26th, right? No Highland hearings that I can think of
16 between now and the 26th.

17 MR. POMERANTZ: I don't think so.

18 MR. MORRIS: I think that's correct, Your Honor.

19 THE COURT: So you have all this time --

20 MR. MORRIS: At the moment.

21 THE COURT: You have all this time to negotiate and
22 simultaneously get ready for the confirmation hearing without
23 any other battles. So I know you will use the time well.

24 All right. We're adjourned.

25 THE CLERK: All rise.

1 MR. BONDS: Thank you, Your Honor.

2 (Proceedings concluded at 2:04 p.m.)

3 --oOo--

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

01/16/2021

24 _____
25 Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

001588

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APPENDIX 10



CLERK, U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed January 20, 2021

United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

**ORDER APPROVING DEBTOR'S SETTLEMENT
WITH HARBOURVEST (CLAIM NOS. 143, 147, 149, 150, 153, 154) AND
AUTHORIZING ACTIONS CONSISTENT THEREWITH**

This matter having come before the Court on *Debtor's Motion for Entry of an Order Approving Settlement with HarbourVest (Claim Nos. 143, 147, 149, 150, 153, 154) and Authorizing Actions Consistent Therewith* [Docket No. 1625] (the "Motion"),² filed by Highland Capital Management, L.P., the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Bankruptcy Case"); and this Court having considered (a) the

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



arguments made during the Hearing; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtor's estate, its creditors, and other parties-in-interest; and this Court having found the Settlement Agreement fair and equitable; and this Court having analyzed, for the reasons stated on the record, (1) the probability of success in litigating the claims subject to the Settlement Agreement, with due consideration for the uncertainty in fact and law, (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise, including: (i) the best interests of the creditors, with proper deference to their reasonable views, and (ii) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion; and this Court having found that the Debtor's notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is **GRANTED** as set forth herein.
2. All objections to the Motion are overruled.
3. The Settlement Agreement, attached hereto as **Exhibit 1**, is approved in all respects pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure.

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of December 23, 2020, between Highland Capital Management, L.P. (the “Debtor”), on the one hand, and HarbourVest 2017 Global Fund L.P., HarbourVest 2017 Global AIF L.P., HarbourVest Dover Street IX Investment L.P., HV International VIII Secondary L.P., HarbourVest Skew Base AIF L.P., and HarbourVest Partners L.P. (each, a “HarbourVest Party,” and collectively, “HarbourVest”), on the other hand. Each of the foregoing are sometimes referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, on October 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”) in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Delaware Bankruptcy Court”);

WHEREAS, on December 4, 2019, the Delaware Bankruptcy Court entered an order transferring venue of the Debtor’s case to the Bankruptcy Court for the Northern District of Texas, Dallas Division, Case No. 19-34054-sgj (the “Bankruptcy Court”);

WHEREAS, prior to the Petition Date, HarbourVest invested in Highland CLO Funding, Ltd. f/k/a Acis Loan Funding, Ltd. (“HCLOF”) and acquired an a 49.98% ownership interest in HCLOF (the “HarbourVest Interests”);

WHEREAS, the portfolio manager for HCLOF is Highland HCF Advisor, Ltd., a subsidiary of the Debtor;

WHEREAS, on April 8, 2020, HarbourVest filed proofs of claim in the Bankruptcy Case, which are listed on the Debtor’s claims register as claim numbers 143, 147, 149, 150, 153, and 154 (the “HarbourVest Claims”), asserting claims against the Debtor relating to its investment in HCLOF;

WHEREAS, on July 30, 2020, the Debtor filed the *Debtor’s First Omnibus Objection to Certain (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 906], in which the Debtor objected to the HarbourVest Claims;

WHEREAS, on September 11, 2020, HarbourVest filed the *HarbourVest Response to Debtor’s First Omnibus Objection to Creation (a) Duplicate Claims; (b) Overstated Claims; (c) Late-Filed Claims; (d) Satisfied Claims; (e) No Liability Claims; and (f) Insufficient-Documentation Claims* [Docket No. 1057] (the “HarbourVest Response”);

WHEREAS, on October 18, 2020, HarbourVest filed the *Motion of HarbourVest Pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure for Temporary Allowance of Claims for Purposes of Voting to Accept or Reject the Plan* [Docket No. 1207] (the “3018 Motion” and together with the HarbourVest Response, the “HarbourVest Pleadings”);

WHEREAS, in the HarbourVest Pleadings, HarbourVest asserted, among other things, that the HarbourVest Claims included claims against the Debtor arising from fraudulent inducement, fraudulent concealment, fraudulent misrepresentation, breach of fiduciary duty, breach of securities laws, and misuse of assets and sought damages in excess of \$300,000,000;

WHEREAS, the Debtor disputes the HarbourVest Claims;

WHEREAS, on November 24, 2020, the Debtor filed the *Fifth Amended Plan of Reorganization for Highland Capital Management, L.P.* [Docket No. 1472] (as amended, the “Plan”).¹

WHEREAS, the Parties desire to enter into this Agreement which incorporates, formalizes, and finalizes the full and final resolution of the HarbourVest Claims and HarbourVest Pleadings; and

WHEREAS, this Agreement will be presented to the Bankruptcy Court for approval pursuant to **Federal Rule of Bankruptcy Procedure 9019** (“Rule 9019”).

NOW THEREFORE, in consideration of the above recitals, the covenants, conditions, and promises made herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Settlement of Claims.

(a) In full and complete satisfaction of the HarbourVest Claims, HarbourVest will receive:

(i) an allowed, nonpriority general unsecured claim in the aggregate amount of \$45,000,000 (the “Allowed GUC Claim”); and

(ii) an allowed subordinated claim in the aggregate amount of \$35,000,000 (the “Allowed Subordinated Claim” and together with the Allowed GUC Claim, the “Allowed Claims”).

(b) On the Effective Date, HarbourVest will transfer all of its rights, title, and interest in the HarbourVest Interests to the Debtor or its nominee pursuant to the terms of the *Transfer Agreement for Ordinary Shares of Highland CLO Funding, Ltd.*, attached hereto as Exhibit A (the “Transfer Agreements”) and the Debtor or its nominee will become a shareholder of HCLOF with respect to the HarbourVest Interests. The terms of the Transfer Agreements are incorporated into this Agreement by reference.

2. Releases.

(a) Upon the Effective Date, and to the maximum extent permitted by law, each HarbourVest Party on behalf of itself and each of its current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents,

¹ All capitalized terms used but not defined herein shall have the meanings given to them in the Plan.

participants, subsidiaries, parents, successors, designees, and assigns hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue, the Debtor, HCLOF, HCLOF's current and former directors, and the Debtor's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns, except as expressly set forth below (the "Debtor Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, including, without limitation, those which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "HarbourVest Released Claims").

(b) Upon the Effective Date, and to the maximum extent permitted by law, the Debtor hereby forever, finally, fully, unconditionally, and completely releases, relieves, acquits, remises, and exonerates, and covenants never to sue (i) each HarbourVest Party and (ii) each HarbourVest Party's current and former advisors, trustees, directors, officers, managers, members, partners, employees, beneficiaries, shareholders, agents, participants, subsidiaries, parents, affiliates, successors, designees, and assigns (the "HarbourVest Released Parties"), for and from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, liens, losses, costs and expenses (including, without limitation, attorney's fees and related costs), damages, injuries, suits, actions, and causes of action of whatever kind or nature, whether known or unknown, suspected or unsuspected, matured or unmatured, liquidated or unliquidated, contingent or fixed, at law or in equity, statutory or otherwise, including, without limitation, any claims, defenses, and affirmative defenses, whether known or unknown, which were or could have been asserted in, in connection with, or with respect to the Bankruptcy Case (collectively, the "Debtor Released Claims"); *provided, however*, that notwithstanding anything herein to the contrary, the release contained in this Section 2(b) will apply to the HarbourVest Released Parties set forth in subsection (b)(ii) only with respect to Debtor Released Claims arising from or relating to HarbourVest's ownership of the HarbourVest Interests.

(c) Notwithstanding anything in this Agreement to the contrary, the releases set forth herein will not apply with respect to (i) the Allowed Claims, (ii) the claims of Charlotte Investor IV, L.P., or (iii) the duties, rights, or obligations of any Party under this Agreement or the Transfer Agreements.

3. **Agreement Subject to Bankruptcy Court Approval.** The effectiveness of this Agreement and the Parties' obligations hereunder are conditioned in all respects on the approval of this Agreement by the Bankruptcy Court. The Parties agree to cooperate and use reasonable efforts to have this Agreement approved by the Bankruptcy Court. The "Effective Date" will be the date of an order entered by the Bankruptcy Court approving this Agreement pursuant to a motion filed under Rule 9019.

4. **Representations and Warranties.** Subject in all respects to Section 3 hereof:

(a) each HarbourVest Party represents and warrants that (i) it has full authority to enter into this Agreement and to release the HarbourVest Released Claims and has not sold, transferred, or assigned any HarbourVest Released Claim to any other person or entity, (ii) no person or entity other than such HarbourVest Party has been, is, or will be authorized to bring, pursue, or enforce any HarbourVest Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of such HarbourVest Party; and (iii) HarbourVest owns all of the HCLOF Interests free and clear of any claims or interests; and

(b) the Debtor represents and warrants to HarbourVest that (i) it has full authority to enter into this Agreement and to release the Debtor Released Claims and (ii) no person or entity other than the Debtor has been, is, or will be authorized to bring, pursue, or enforce any Debtor Released Claim on behalf of, for the benefit of, or in the name of (whether directly or derivatively) of the Debtor Party.

5. **Plan Support.**

(a) Each HarbourVest Party hereby agrees that it will (a) vote all HarbourVest Claims held by such HarbourVest Party to accept the Plan, by delivering its duly executed and completed ballots accepting the Plan on a timely basis; and (b) not (i) change, withdraw, or revoke such vote (or cause or direct such vote to be changed withdrawn or revoked); (ii) exercise any right or remedy for the enforcement, collection, or recovery of any claim against the Debtor except in a manner consistent with this Agreement or the Plan, (iii) object to, impede, or take any action other action to interfere with, delay or postpone acceptance or confirmation of the Plan; (iv) directly or indirectly solicit, propose, file, support, participate in the formulation of or vote for, any restructuring, sale of assets (including pursuant to **11 U.S.C. § 363**), merger, workout, or plan of reorganization of the Debtor other than the Plan; or (v) otherwise take any action that would in any material respect interfere with, delay, or postpone the consummation of the Plan; provided, however, that such vote may be revoked (and, upon such revocation, deemed void ab initio) by such HarbourVest Party at any time following the termination of this agreement or the occurrence of a Support Termination Event (it being understood that any termination of this agreement shall entitle each HarbourVest Party to change its vote in accordance with section 1127(d) of the Bankruptcy Code), notwithstanding any voting deadline established by the Bankruptcy Court including without limitation the January 5, 2021, 5:00 p.m. (prevailing Central Time) deadline established by the *Order Approving Form of Ballots, Voting Deadline and Solicitation Procedures* [Docket No. 1476].

(b) In full resolution of the 3018 Motion, HarbourVest will have a general unsecured claim for voting purposes only in the amount of \$45,000,000.

(c) The obligations of the HarbourVest Parties under this Section 5 shall automatically terminate upon the occurrence of any of the following (each a “Support Termination Event”): (i) the effective date of the Plan, (ii) the withdrawal of the Plan, (iii) the entry of an order by the Bankruptcy Court (A) converting the Bankruptcy Case to a case under chapter 7 of the Bankruptcy Code or (B) appointing an examiner with expanded powers beyond those set forth in sections 1106(a)(3) and (4) of the Bankruptcy Code or a trustee in Bankruptcy

Case, or (iv) the failure of the Court to enter an order approving the terms of this Agreement and the settlement described herein pursuant to Rule 9019 prior to confirmation of the Plan.

6. **No Admission of Liability.** The Parties acknowledge that there is a bona fide dispute with respect to the HarbourVest Claims. Nothing in this Agreement will imply, an admission of liability, fault or wrongdoing by the Debtor, HarbourVest, or any other person, and the execution of this Agreement does not constitute an admission of liability, fault, or wrongdoing on the part of the Debtor, HarbourVest, or any other person.

7. **Successors-in-Interest.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties and their successors, and assigns.

8. **Notice.** Each notice and other communication hereunder will be in writing and will be sent by email and delivered or mailed by registered mail, receipt requested, and will be deemed to have been given on the date of its delivery, if delivered, and on the fifth full business day following the date of the mailing, if mailed to each of the Parties thereto at the following respective addresses or such other address as may be specified in any notice delivered or mailed as set forth below:

HARBOURVEST

HarbourVest Partners L.P.
Attention: Michael J. Pugatch
One Financial Center
Boston, MA 02111
Telephone No. 617-348-3712
E-mail: mpugatch@harbourvest.com

with a copy (which shall not constitute notice) to:

Debevoise & Plimpton LLP
Attention: M. Natasha Labovitz, Esq.
919 Third Avenue
New York, NY 10022
Telephone No. 212-909-6649
E-mail: nlabovitz@debevoise.com

THE DEBTOR

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201
Attention: James P. Seery, Jr.
Telephone No.: 972-628-4100
Facsimile No.: 972-628-4147
E-mail: jpseeryjr@gmail.com

with a copy (which shall not constitute notice) to:

Pachulski Stang Ziehl & Jones LLP
Attention: Jeffrey Pomerantz, Esq.
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone No.: 310-277-6910
Facsimile No.: 310-201-0760
E-mail: jpomerantz@pszjlaw.com

9. **Advice of Counsel.** Each Party represents that it has: (a) been adequately represented by independent legal counsel of its own choice, throughout all of the negotiations that preceded the execution of this Agreement; (b) executed this Agreement upon the advice of such counsel; (c) read this Agreement, and understands and assents to all the terms and conditions contained herein without any reservations; and (d) had the opportunity to have this Agreement and all the terms and conditions contained herein explained by independent counsel, who has answered any and all questions asked of such counsel, or which could have been asked of such counsel, including, but not limited to, with regard to the meaning and effect of any of the provisions of this Agreement.

10. **Entire Agreement.** This Agreement and the Transfer Agreement contain the entire agreement and understanding concerning the subject matter of this Agreement, and supersede and replace all prior negotiations and agreements, written or oral and executed or unexecuted, concerning such subject matter. Each of the Parties acknowledges that no other Party, nor any agent of or attorney for any such Party, has made any promise, representation or warranty, express or implied, written or oral, not otherwise contained in this Agreement to induce any Party to execute this Agreement. The Parties further acknowledge that they are not executing this Agreement in reliance on any promise, representation or warranty not contained in this Agreement, and that any such reliance would be unreasonable. This Agreement will not be waived or modified except by an agreement in writing signed by each Party or duly authorized representative of each Party.

11. **No Party Deemed Drafter.** The Parties acknowledge that the terms of this Agreement are contractual and are the result of arms'-length negotiations between the Parties and their chosen counsel. Each Party and its counsel cooperated in the drafting and preparation of this Agreement. In any construction to be made of this Agreement, the Agreement will not be construed against any Party.

12. **Future Cooperation.** The Parties agree to cooperate and execute such further documentation as is reasonably necessary to effectuate the intent of this Agreement.

13. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document. Each Party's signature hereto will signify acceptance of, and agreement to, the terms and provisions contained in this Agreement. Photographic, electronic, and facsimile copies of signed counterparts may be used in lieu of the originals of this Agreement for any purpose.

14. **Governing Law; Venue; Attorneys' Fees and Costs.** The Parties agree that this Agreement will be governed by and will be construed according to the laws of the State of Texas without regard to conflict-of-law principles. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court during the pendency of the Bankruptcy Case and thereafter to the exclusive jurisdiction of the state and federal courts located in the Northern District of Texas, Dallas Division, with respect to any disputes arising from or out of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorneys' fees and costs (including experts).

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IT IS HEREBY AGREED.

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: /s/ James P. Seery, Jr.
Name: James P. Seery, Jr.
Its: CEO/CRO

HarbourVest 2017 Global Fund L.P., by HarbourVest 2017 Global Associates L.P., its General Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC, its Managing Member

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest 2017 Global AIF L.P., by HarbourVest Partners (Ireland) Limited, its Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Dover Street IX Investment L.P., by HarbourVest Partners L.P., its Duly Appointed Investment Manager, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

HarbourVest Partners L.P., on behalf of funds and accounts under management, by HarbourVest Partners, LLC, its General Partner

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

**HarbourVest Skew Base AIF L.P., by HarbourVest Partners (Ireland) Limited, its
Alternative Investment Fund Manager, by HarbourVest Partners L.P., its Duly Appointed
Investment Manager, by HarbourVest Partners, LLC, its General Partner**

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

**HV International VIII Secondary L.P., by HIPEP VIII Associates L.P., its General
Partner, by HarbourVest GP LLC, its General Partner, by HarbourVest Partners, LLC,
its Managing Member**

By: /s/ Michael Pugatch
Name: Michael Pugatch
Its: Managing Director

Exhibit A

4

IN WITNESS WHEREOF, the undersigned have executed this Transfer Agreement as of the date first above written.

TRANSFERORS:

HarbourVest Dover Street IX Investment L.P.

By: HarbourVest Partners L.P., its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC

By: _____

Name: Michael Pugatch

Title: Managing Director

HV International VIII Secondary L.P.

By: HIPEP VIII Associates L.P.
Its General Partner

By: HarbourVest GP LLC
Its General Partner

By: HarbourVest Partners, LLC
Its Managing Member

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest 2017 Global AIF L.P.

By: HarbourVest Partners (Ireland) Limited
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

HarbourVest Skew Base AIF L.P.

By: HarbourVest Partners (Ireland) Limited
Its Alternative Investment Fund Manager

By: HarbourVest Partners L.P.
Its Duly Appointed Investment Manager

By: HarbourVest Partners, LLC
Its General Partner

By: _____

Name: Michael Pugatch

Title: Managing Director

Exhibit A

<u>Transferee Name</u>	<u>Number of Shares</u>	<u>Percentage</u>
HarbourVest Dover Street IX Investment L.P.	54,355,482.14	71.0096%
HarbourVest 2017 Global AIF L.P.	7,426,940.38	9.7025%
HarbourVest 2017 Global Fund L.P.	3,713,508.46	4.8513%
HV International VIII Secondary L.P.	9,946,780.11	12.9944%
HarbourVest Skew Base AIF L.P.	1,103,956.03	1.4422%

APPENDIX 11

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

**CHARITABLE DAF FUND, L.P.
and CLO HOLDCO, LTD.,
*directly and derivatively,***

Plaintiffs,

V.

Cause No. _____

**HIGHLAND CAPITAL MANAGEMENT,
L.P. , HIGHLAND HCF ADVISOR, LTD.,
and HIGHLAND CLO FUNDING, LTD.,
*nominally,***

Defendants.

ORIGINAL COMPLAINT

I.

INTRODUCTION

This action arises out of the acts and omissions of Defendant Highland Capital Management, L.P. (“HCM”), which is the general manager of Highland HCF Advisor, Ltd. (“HCFA”), both of which are registered investment advisers under the Investment Advisers Act of 1940 (the “Advisers Act”),¹ and nominal Defendant Highland CLO Funding, Ltd. (“HCLOF”) (HCM and HCFA each a “Defendant,” or together, “Defendants”). The acts and omissions which have recently come to light reveal breaches of fiduciary duty, a pattern of violations of the Advisers Act’s anti-fraud provisions, and concealed breaches of the HCLOF Company Agreement, among others, which have caused and/or likely will cause Plaintiffs damages.

¹ <https://adviserinfo.sec.gov/firm/summary/110126>

At all relevant times, HCM was headed by CEO and potential party James P. Seery (“Seery”). Seery negotiated a settlement with the several Harbourvest² entities who owned 49.98% of HCLOF. The deal had HCM (or its designee) purchasing the Harbourvest membership interests in HCLOF for \$22.5 million. Recent revelations, however, show that the sale was predicated upon a sales price that was vastly below the Net Asset Value (“NAV”) of those interests. Upon information and belief, the NAV of HCLOF’s assets had risen precipitously, but was not disclosed to Harbourvest nor to Plaintiffs.

Under the Advisers Act, Defendants have a non-waivable duty of loyalty and candor, which includes its duty not to inside trade with its own investors, *i.e.*, not to trade with an investor to which HCM and Seery had access to superior non-public information. Upon information and belief, HCM’s internal compliance policies required by the Advisers Act would not generally have allowed a trade of this nature to go forward—meaning, the trade either was approved in spite of compliance rules preventing it, or the compliance protocols themselves were disabled or amended to a level that leaves Defendants HCM and HCLOF exposed to liability. Thus, Defendants have created an unacceptable perpetuation of exposure to liability.

Additionally, Defendants are liable for a pattern of conduct that gives rise to liability for their conduct of the enterprise consisting of HCM in relation to HCFA and HCLOF, through a pattern of concealment, misrepresentation, and violations of the securities rules. In the alternative, HCFA and HCM, are guilty of self-dealing, violations of the Advisers Act, and tortious interference by (a) not disclosing that Harbourvest had agreed to sell at a price well below the current NAV, and (b) diverting the Harbourvest opportunity to themselves.

² “Harbourvest” refers to the collective of Harbourvest Dover Street IX Investment, L.P., Harbourvest 2017 Global AIF, L.P., Harbourvest 2017 Global Fund, L.P., HV International VIII Secondary, L.P., and Harbourvest Skew Base AIF, L.P. Each was a member of Defendant Highland CLO Funding, Ltd.

For these reasons, judgment should be issued in Plaintiffs' favor.

II.

PARTIES

1. Plaintiff CLO Holdco, Ltd. is a limited company incorporated under the laws of the Cayman Islands.

2. Plaintiff Charitable DAF Fund, L.P., ("DAF") is a limited partnership formed under the laws of the Cayman Islands.

3. Defendant Highland Capital Management, L.P. is a limited partnership with its principal place of business at 300 Crescent Court, Suite 700, Dallas, Texas 75201. It may be served at its principal place of business or through its principal officer, James P. Seery, Jr., or through the Texas Secretary of State, or through any other means authorized by federal or state law.

4. Defendant Highland HCF Advisor, Ltd. is a limited company incorporated under the laws of the Cayman Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201. It is a registered investment adviser ("RIA") subject to the laws and regulations of the Investment Advisers Act of 1940 (the "Adviser's Act"). It is a wholly-owned subsidiary of Highland Capital Management, L.P.

5. Nominal Defendant Highland CLO Funding, Ltd. is a limited company incorporated under the laws of the Island of Guernsey. Its registered office is at First Floor, Dorey Court, Admiral Park, St. Peter Port, Guernsey GY1 6HJ, Channel Islands. Its principal place of business is 300 Crescent Court, Suite 700, Dallas, Texas 75201.

6. Potential party James P. Seery, Jr. ("Seery") is an officer and/or director and/or control person of Defendants Highland Capital Management, L.P., Highland CLO Funding, Ltd., and Highland HCF Advisor, Ltd., and is a citizen of and domiciled in Floral Park, New York.

III.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this dispute under 28 U.S.C. § 1331 as one or more rights and/or causes of action arise under the laws of the United States. This Court has supplemental subject matter jurisdiction over all other claims under 28 U.S.C. § 1367.

8. Personal jurisdiction is proper over the Defendants because they reside and/or have continual contacts with the state of Texas, having regularly submitted to jurisdiction here. Jurisdiction is also proper under 18 U.S.C. § 1965(d).

9. Venue is proper in this Court under 28 U.S.C. § 1391(b) and (c) because one or more Defendants reside in this district and/or a substantial part of the events or omissions giving rise to the claim occurred or a substantial part of property that is the subject of the action is situated in this district. Venue in this district is further provided under 18 U.S.C. § 1965(d).

IV.

RELEVANT BACKGROUND

HCLOF IS FORMED

10. Plaintiff DAF is a charitable fund that helps several causes throughout the country, including providing funding for humanitarian issues (such as veteran's welfare associations and women's shelters), public works (such as museums, parks and zoos), and education (such as specialty schools in underserved communities). Its mission is critical.

11. Since 2012, DAF was advised by its registered investment adviser, Highland Capital Management, L.P., and its various subsidiaries, about where to invest. This relationship was governed by an Investment advisory Agreement.

12. At one point in 2017, HCM advised DAF to acquire 143,454,001 shares of HCLOF, with HCFA (a subsidiary of HCM) serving as the portfolio manager. DAF did so via a holding entity, Plaintiff CLO Holdco, Ltd.

13. On November 15, 2017, through a Subscription and Transfer Agreement, the DAF entered into an agreement with others to sell and transfer shares in HCLOF, wherein the DAF retained 49.02% in CLO Holdco.

14. Pursuant to that agreement, Harbourvest acquired the following interests in the following entities:

Harbourvest Dover Street IX Investment, L.P., acquired 35.49%;

Harbourvest 2017 Global AIF, L.P., acquired 2.42%;

Harbourvest 2017 lobal Fund, L.P., acquired 4.85%;

HV International VIII Secondary, L.P., acquired 6.5%; and

Harbourvest Skew Base AIF, L.P., acquired 0.72%;

for a total of 49.98% (altogether, the “Harbourvest interests”).

15. On or about October 16, 2019, Highland Capital Management filed for Chapter 11 bankruptcy in Delaware Bankruptcy Court, which was later transferred to the Northern District of Texas Bankruptcy Court, in the case styled *In Re: Highland Capital Management, L.P., Debtor*, Cause No. 19-34054, (the “HCM Bankruptcy” and the Court is the “Bankruptcy Court”).

The Harbourvest Settlement with Highland Capital Management in Bankruptcy

16. On April 8, 2020, Harbourvest submitted its proofs of claim in the HCM bankruptcy proceeding. Annexed to its proofs of claims was an explanation of the Proof of Claim and the basis therefor setting out various pre-petition allegations of wrongdoing by HCM. *See, e.g.*, Case No. 19-bk-34054, Doc. 1631-5.

17. The debtor, HCM, made an omnibus response to the proofs of claims, stating they were duplicative of each other, overstated, late, and otherwise meritless.

18. Harbourvest responded to the omnibus objections on September 11, 2020. *See* Cause No. 19-bk-34054, Doc. 1057.

19. Harbourvest represented that it had invested in HCLOF, purchasing 49.98% of HCLOF's outstanding shares.

20. Plaintiff CLO Holdco was and is also a 49.02% holder of HCLOF's member interests.

21. In its Omnibus Response, Harbourvest explained that its claims included unliquidated legal claims for fraud, fraud in the inducement, RICO violations under 18 U.S.C. 1964, among others (the "Harbourvest Claims"). *See* Cause No. 19-bk-34054, Doc. 1057.

22. The Harbourvest Claims centered on allegations that when Harbourvest was intending to invest in a pool of Collateralized Loan Obligations, or CLOs, that were then-managed by Acis Capital Management ("Acis"), a subsidiary of HCM, HCM failed to disclose key facts about ongoing litigation with a former employee, Josh Terry.

23. Harbourvest contended that HCM never sufficiently disclosed the underlying facts about the litigation with Terry, and HCM's then-intended strategy to fight Terry caused HCLOF to incur around \$15 million in legal fees and costs. It contended that had it known the nature of the lawsuit and how it would eventually turn out, Harbourvest never would have invested in HCLOF. *See* Cause No. 19-bk-34054, Doc. 1057.

24. HCLOF's portfolio manager is HCFA. HCM is the parent of HCFA and is managed by its General Partner, Strand Management, who employs Seery and acts on behalf of HCM.

25. Before acceding to the Harbourvest interests, HCM was a 0.6% holder of HCLOF interests.

26. While even assuming Harbourvest's underlying claims were valid as far as the lost \$15 million went, the true damage of the legal fees to Harbourvest would have been 49.98% of the HCLOF losses (i.e., less than \$7.5 million). Harbourvest claimed that it had lost over \$100 million in the HCLOF transaction due to fraud, which, after trebling under the racketeering statute, it claimed it was entitled to over \$300 million in damages.

27. In truth, as of September 2020, Harbourvest had indeed lost some \$52 million due to the alleged diminishing value of the HCLOF assets (largely due to the underperformance of the Acis entities³)—and the values were starting to recover.

28. HCM denied the allegations in the Bankruptcy Court. Other than the claim for waste of corporate assets of \$15 million, HCM at all times viewed the Harbourvest legal claims as being worth near zero and having no merit.

29. On December 23, 2020, HCM moved the Court to approve a settlement between itself and Harbourvest. No discovery had taken place between the parties, and Plaintiff did not have any notice of the settlement terms or other factors prior to the motion's filing (or even during its pendency) in order to investigate its rights.

30. HCM set the hearing right after the Christmas and New Year's holidays, almost ensuring that no party would have the time to scrutinize the underpinnings of the deal.

31. On January 14, 2021, the Bankruptcy Court held an evidentiary hearing and approved the settlement in a bench ruling, overruling the objections to the settlement.

³ Acis was being managed by Joshua Terry. JP Morgan had listed the four ACIS entities under his management as the four worst performers of the 1200 CLOs it evaluated.

32. An integral part of the settlement was allowing \$45 million in unsecured claims that, at the time of the agreement, were expected to net Harbourvest around 70 cents on the dollar. In other words, Harbourvest was expected to recover around \$31,500,000 from the allowed claims.

33. As part of the consideration for the \$45 million in allowed claims, Harbourvest agreed to transfer all of its interests in HCLOF to HCM or its designee.

34. HCM and Seery rationalized the settlement value by allocating \$22.5 million of the net value of the \$45 million in unsecured claims as consideration to purchase Harbourvest's interests in HCLOF, meaning, if 70% of the unsecured claims—i.e., \$31.5 million—was realized, because \$22.5 million of that would be allocated to the purchase price of the Harbourvest interests in HCLOF, the true “settlement” for Harbourvest's legal claims was closer to \$9 million.

35. Plaintiffs here are taking no position at this time about the propriety of settling the Harbourvest legal claims for \$9 million. That is for another day.

36. At the core of this lawsuit is the fact that HCM purchased the Harbourvest interests in HCLOF for \$22.5 million knowing that they were worth far more than that.

37. It has recently come to light that, upon information and belief, the Harbourvest interests, as of December 31, 2020, were worth in excess of \$41,750,000, and they have continued to go up in value.

38. On November 30, 2020, which was less than a month prior to the filing of the Motion to Approve the Settlement, the net asset value of those interests was over \$34.5 million. Plaintiffs were never made aware of that.

39. The change is due to how the net asset value, or NAV, was calculated. The means and methods for calculating the “net asset value” of the assets of HCLOF are subject to and

governed by the regulations passed by the SEC pursuant to the Adviser's Act, and by HCM's internal policies and procedures.

40. Typically, the value of the securities reflected by a market price quote.

41. However, the underlying securities in HCLOF are not liquid and had not been traded in a long while.

42. There not having been any contemporaneous market quotations that could be used in good faith to set the marks⁴ meant that other prescribed methods of assessing the value of the interests, such as the NAV, would have been the proper substitutes.

43. Seery testified that the fair market value of the Harbourvest HCLOF interests was \$22.5 million. Even allowing some leeway there, it was off the mark by a mile.

44. Given the artifice described herein, Seery and the entity Defendants had to know that the representation of the fair market value was false. But it does not appear that they disclosed it to Harbourvest to whom they owed fiduciary duties as the RIA in charge of HCLOF, and they certainly did not disclose the truth to the Plaintiff.

45. It is either the case that (i) Defendants conducted the proper analysis to obtain a current value of the assets but decided to use a far lower valuation in order to whitewash the settlement or enrich the bankruptcy estate; *or* (ii) Defendants never conducted the proper current valuation, and therefore baselessly represented what the current value of the assets was, despite knowingly having no reasonable basis for making such a claim.

46. For years HCM had such internal procedures and compliance protocols. HCM was not allowed by its own compliance officers to trade with an investor where HCM had superior knowledge about the value of the assets, for example. While Plaintiff has no reason to believe that

⁴ The term "mark" is shorthand for an estimated or calculated value for a non-publicly traded instrument.

those procedures were scrapped in recent months, it can only assume that they were either overridden improperly or circumvented wholesale.

47. Upon finalizing the Harbourvest Settlement Agreement and making representations to the Bankruptcy Court to the Plaintiffs about the value of the Harbourvest Interests, Seery and HCM had a duty to use current values and not rely on old valuations of the assets or the HCLOF interests.

48. Given Defendants' actual or constructive knowledge that they were purchasing Harbourvest's Interests in HCLOF for a less than 50% of what those interests were worth—Defendants owed Plaintiff a fiduciary duty not to purchase them for themselves.

49. Defendants should have either had HCLOF repurchase the interests with cash, or offer those interests to Plaintiff and the other members *pro rata*, before HCM agreed to purchase them all lock, stock and barrel, for no up-front cash.

50. Indeed, had Plaintiff been offered those interests, it would have happily purchased them and therefore would have infused over \$20 million in cash into the estate for the purpose of executing the Harbourvest Settlement.

51. That Defendants (and to perhaps a lesser extent, the Unsecured Creditors Committee (the "UCC")) agreed to pay \$22.5 million for the HCLOF assets, where they had previously not consented to any such expenditure by the estate on behalf of HCLOF, strongly indicates their awareness that they were purchasing assets for far below market value.

52. The above is the most reasonable and plausible explanation for why Defendants and the UCC forwent raising as much as \$22.5 million in cash now in favor of hanging on to the HCLOF assets.

53. Indeed, in January 2021 Seery threatened Ethen Powell that “[Judge Jernigan] is laughing at you” and “we are coming after you” in response to the latter’s attempt to exercise his right as beneficial holder of the CLO, and pointing out a conflict of interest in Seery’s plan to liquidate the funds.

54. HCM’s threat, made by Seery, is tantamount to not only a declaration that he intends to liquidate the funds regardless of whether the investors want to do so, and whether it is in their best interests, but also that HCM intends to leverage what it views as the Bankruptcy Court’s sympathy to evade accountability.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION ***Breaches of Fiduciary Duty***

55. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

56. HCM is a registered investment advisor and acts on behalf of HCFA. Both are fiduciaries to Plaintiffs.

57. The Advisers Act establishes an unwaivable federal fiduciary duty for investment advisers.⁵

⁵ See e.g., *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963); *Transamerica Mortg. Advisors (tama) v. Lewis*, 444 U.S. 11, 17 (1979) (“§ 206 establishes ‘federal fiduciary standards’ to govern the conduct of investment advisers.”); *Santa Fe Indus. v. Green*, 430 U.S. 462, 471, n.11 (1977) (in discussing *SEC v. Capital Gains*, stating that the Supreme Court’s reference to fraud in the “equitable” sense of the term was “premised on its recognition that Congress intended the Investment Advisers Act to establish federal fiduciary standards for investment advisers”). See also Investment Advisers Act Release No. 3060 (July 28, 2010) (“Under the Advisers Act, an adviser is a fiduciary whose duty is to serve the best interests of its clients, which includes an obligation not to subrogate clients’ interests to its own”) (citing Proxy Voting by Investment Advisers, Investment Advisers Act Release No. 2106 (Jan. 31, 2003)).

58. HCM and the DAF entered into an Amended and Restated Investment Advisory Agreement, executed between them on July 1, 2014 (the “RIA Agreement”). It renews annually and continued until the end of January 2021.

59. In addition to being the RIA to the DAF, HCM was appointed the DAF’s attorney-in-fact for certain actions, such as “to purchase or otherwise trade in Financial Instruments that have been approved by the General Partner.” RIA Agreement ¶ 4.

60. The RIA Agreement further commits HCM to value financial assets “in accordance with the then current valuation policy of the Investment Advisor [HCM], a copy of which will provided to the General Partner upon request.” RIA Agreement ¶ 5.

61. While HCM contracted for the recognition that it would be acting on behalf of others and could be in conflict with advice given the DAF, (RIA Agreement ¶ 12), nowhere did it purport to waive the fiduciary duties owed to the DAF not to trade as a principal in a manner that harmed the DAF.

62. HCFA owed a fiduciary duty to Holdco as an investor in HCLOF and to which HCFA was the portfolio manager. HCM owed a fiduciary duty to the DAF (and to Holdco as its subsidiary) pursuant to a written Advisory Agreement HCM and the DAF had where HCM agreed to provide sound investment advice and management functions.

63. As a registered investment adviser, HCM’s fiduciary duty is broad and applies to the entire advisor-client relationship.

64. The core of the fiduciary duty is to act in the best interest of their investors—the advisor must put the ends of the client before its own ends or the ends of a third party.

65. This is manifested in a duty of loyalty and a duty of utmost care. It also means that the RIA has to follow the terms of the company agreements and the regulations that apply to the investment vehicle.

66. The fiduciary duty that HCM and Seery owed to Plaintiff is predicated on trust and confidence. Section 204A of the Advisers Act requires investment advisors (whether SEC-registered or not) to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the RIA from trading on material, non-public information. *See* 17 C.F.R. § 275.206(4)-7. That means that Plaintiff should be able to take Defendants at their word and not have to second guess or dig behind representations made by them.

67. The simple thesis of this claim is that Defendants HCFA and HCM breached their fiduciary duties by (i) insider trading with Harbourvest and concealing the rising NAV of the underlying assets—i.e., trading with Harbourvest on superior, non-public information that was neither revealed to Harbourvest nor to Plaintiff; (ii) concealing the value of the Harbourvest Interests; and (iii) diverting the investment opportunity in the Harbourvest entities to HCM (or its designee) without offering it to or making it available to Plaintiff or the DAF.

68. HCM, as part of its contractual advisory function with Plaintiffs, had expressly recommended the HCLOF investment to the DAF. Thus, diverting the opportunity for returns on its investment was an additional breach of fiduciary duty.

69. This violated a multitude of regulations under 27 C.F.R. part 275, in addition to Rules 10b-5 and 10b5-1. 17 CFR 240.10b5-1 (“Rule 10b5-1”) explains that one who trades while possessing non-public information is liable for insider trading, and they do not necessarily have to have *used* the specific inside information.

70. It also violated HCM’s own internal policies and procedures.

71. Also, the regulations impose obligations on Defendants to calculate a *current* valuation when communicating with an investor, such as what may or may not be taken into account, and what cannot pass muster as a current valuation. Upon information and belief, these regulations were not followed by the Defendants.

72. HCM's internal policies and procedures, which it promised to abide by both in the RIA Agreement and in its Form ADV SEC filing, provided for the means of properly calculating the value of the assets.

73. HCM either did not follow these policies, changed them to be out of compliance both with the Adviser Act regulations and its Form ADV representations, and/or simply misrepresented or concealed their results.

74. In so doing, because the fiduciary duty owed to Plaintiff is a broad one, and because Defendants' malfeasance directly implicates its relationship with Plaintiff, Defendants have breached the Advisers Act's fiduciary duties owed to Plaintiff as part of their fiduciary relationship.⁶

75. At no time between agreeing with Harbourvest to the purchase of its interests and the court approval did Defendants disclose to either Harbourvest or to Plaintiff (and the Bankruptcy Court for that matter) that the purchase was at below 50% the current net asset value as well, and when they failed to offer Plaintiff (and the other members of HCLOF) their right to purchase the interests pro rata at such advantageous valuations. Plaintiff's lost opportunity to

⁶ See Advisers Act Release No. 4197 (Sept. 17, 2015) (Commission Opinion) (“[O]nce an investment Advisory relationship is formed, the Advisers Act does not permit an adviser to exploit that fiduciary relationship by defrauding his client in any investment transaction connected to the Advisory relationship.”); see also *SEC v. Lauer*, No. 03-80612-CIV, 2008 U.S. Dist. LEXIS 73026, at 90 (S.D. Fla. Sept. 24, 2008) (“Unlike the antifraud provisions of the Securities Act and the Exchange Act, Section 206 of the Advisers Act does not require that the activity be ‘in the offer or sale of any’ security or ‘in connection with the purchase or sale of any security.’”).

purchase has harmed Plaintiff. Plaintiff had been led to believe by the Defendants that the value of what was being purchased in the Harbourvest settlement by HCM (or its designee) was at fair market value. This representation, repeated again in the Bankruptcy Court during the Harbourvest confirmation, implicitly suggested that a proper current valuation had been performed.

76. Defendant's principal, Seery, testified in January 2021 that the then-current fair market value of Harbourvest's 49.98% interest in HCLOF was worth around \$22.5 million. But by then, it was worth almost double that amount and has continued to appreciate. Seery knew or should have known that fact because the value of some of the HCLOF assets had increased, and he had a duty to know the current value. His lack of actual knowledge, while potentially not overtly fraudulent, would nonetheless amount to a breach of fiduciary duty for acting without proper diligence and information that was plainly available.

77. Furthermore, HCLOF holds equity in MGM Studios and debt in CCS Medical via various CLO positions. But Seery, in his role as CEO of HCM, was made aware during an advisors meeting in December 2020 that Highland would have to restrict its trading in MGM because of its insider status due to activities that were likely to apply upward pressure on MGM's share price.

78. Furthermore, Seery controlled the Board of CCS Medical. And in or around October 2020, Seery was advocating an equatization that would have increased the value of the CCS securities by 25%, which was not reflected in the HCM report of the NAV of HCLOF's holdings.

79. Seery's knowledge is imputed to HCM.

80. Moreover, it is a breach of fiduciary duty to commit corporate waste, which is effectively what disposing of the HCLOF assets would constitute in a rising market, where there

is no demand for disposition by the investors (save for HCM, whose proper 0.6% interest could easily be sold to the DAF at fair value).

81. As holder of 0.6% of the HCLOF interests, and now assignee of the 49.98% Harbourvest Interests), HCM has essentially committed self-dealing by threatening to liquidate HCLOF now that it may be compelled to do so under its proposed liquidation plan, which perhaps inures to the short term goals of HCM but to the pecuniary detriment of the other holders of HCLOF whose upside will be prematurely truncated.

82. Seery and HCM should not be allowed to benefit from the breach of their fiduciary duties because doing so would also cause Plaintiffs irreparable harm. The means and methods of disposal would likely render the full scope of damages to the DAF not susceptible to specific calculation—particularly as they would relate to calculating the lost opportunity cost. Seery and HCM likely do not have the assets to pay a judgment to Plaintiffs that would be rendered, simply taking the lost appreciation of the HCLOF assets.

83. Defendants are thus liable for diverting a corporate opportunity or asset that would or should have been offered to Plaintiff and the other investors. Because federal law makes the duties invoked herein unwaivable, it is preposterous that HCM, as a 0.6% holder of HCLOF, deemed itself entitled to the all of the value and optionality of the below-market Harbourvest purchase.

84. Defendants cannot rely on any contractual provision that purports to waive this violation. Nothing in any agreement purports to permit, authorize or otherwise sanitize Defendants' self-dealing. All such provisions are void.

85. In the fourth quarter of 2020, Seery and HCM notified staff that they would be terminated on December 31, 2020. That termination was postponed to February 28, 2021.

Purchasing the Harbourvest assets without staffing necessary to be a functioning Registered Investment Advisor was a strategic reversal from prior filings that outlined canceling the CLO management contracts and allowing investors to replace Highland as manager.

86. Seery's compensation agreement with the UCC incentivizes him to expedite recoveries and to prevent transparency regarding the Harbourvest settlement.

87. What is more, Seery had previously testified that the management contracts for the funds—HCLOF included—were unprofitable, and that he intended to transfer them. But he later rejected offers to purchase those management contracts for fair value and instead decided to continue to manage the funds—which is what apparently gave rise to the Harbourvest Settlement, among others. He simultaneously rejected an offer for the Harbourvest assets of \$24 million, stating that they were worth much more than that.

88. Because of Defendants' malfeasance, Plaintiffs have lost over \$25 million in damages—a number that continues to rise—and the Defendants should not be able to obtain a windfall.

89. For the same reason, Defendants' malfeasance has also exposed HCLOF to a massive liability from Harbourvest since the assignment of those interests is now one that is likely unenforceable under the Advisers Act, Section 47(b), if there was unequal information.

90. HCM and HCFA are liable as principals for breach of fiduciary duty, as are the principals and compliance staff of each entity.

91. Plaintiffs seek disgorgement, damages, exemplary damages, attorneys' fees and costs. To the extent the Court determines that this claim had to have been brought derivatively on behalf of HCLOF, then Plaintiffs represent that any pre-suit demand would have been futile since asking HCM to bring suit against its principal, Seery, would have been futile.

SECOND CAUSE OF ACTION
Breach of HCLOF Company Agreement
(By Holdco against HCLOF, HCM and HCFA)

92. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein and further alleges the following:

93. On November 15, 2017, the members of HCLOF, along with HCLOF and HCFA, executed the *Members Agreement Relating to the Company* (the “Company Agreement”).

94. The Company Agreement governs the rights and duties of the members of HCLOF.

95. Section 6.2 of HCLOF Company Agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not to an affiliate of the selling member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

96. Here, despite the fact that Harbourvest agreed to sell its interests in HCLOF for \$22.5 million when they were worth more than double that, Defendants did not offer Plaintiff the chance to buy its pro rata share of those interests at the same agreed price of \$22.5 million (adjusted pro rata).

97. The transfer and sale of the interests to HCM were accomplished as part of the Harbourvest Settlement which was approved by the Bankruptcy Court.

98. Plaintiff was not informed of the fact that Harbourvest had offered its shares to Defendant HCM for \$22.5 million—which was under 50% of their true value.

99. Plaintiff was not offered the right to purchase its pro rata share of the Harbourvest interests prior to the agreement being struck or prior to court approval being sought.

100. Had Plaintiff been allowed to do so, it would have obtained the interests with a net equity value over their purchase price worth in excess of \$20 million.

101. No discovery or opportunity to investigate was afforded Plaintiff prior to lodging an objection in the Bankruptcy Court.

102. Plaintiff is entitled to specific performance or, alternatively, disgorgement, constructive trust, damages, attorneys' fees and costs.

THIRD CAUSE OF ACTION
Negligence
(By the DAF and CLO Holdco against HCM and HCFA)

103. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

104. Plaintiffs incorporate the foregoing causes of action and note that all the foregoing violations were breaches of the common law duty of care imposed by law on each of Seery, HCFA and HCM.

105. Each of these Defendants should have known that their actions were violations of the Advisers Act, HCM's internal policies and procedures, the Company Agreement, or all three.

106. Seery and HCM owed duties of care to Plaintiffs to follow HCM's internal policies and procedures regarding both the propriety and means of trading with a customer [Harbourvest], the propriety and means of trading as a principal in an account but in a manner adverse to another customer [the DAF and Holdco], and the proper means of valuing the CLOs and other assets held by HCLOF.

107. It would be foreseeable that failing to disclose the current value of the assets in the HCLOF would impact Plaintiffs negatively in a variety of ways.

108. It would be reasonably foreseeable that failing to correctly and accurately calculate the current net asset value of the market value of the interests would cause Plaintiffs to value the Harbourvest Interests differently.

109. It would be reasonably foreseeable that referring to old and antiquated market quotations and/or valuations of the HCLOF assets or interests would result in a mis-valuation of HCLOF and, therefore, a mis-valuation of the Harbourvest Interests.

110. Likewise, it would have been foreseeable that Plaintiff's failure to give Plaintiff the opportunity to purchase the Harbourvest shares at a \$22.5 million valuation would cause Plaintiff damages. Defendants knew that the value of those assets was rising. They further knew or should have known that whereas those assets were sold to HCM for an allowance of claims to be funded in the future, selling them to Plaintiff would have provided the estate with cash funds.

111. Defendants' negligence foreseeably and directly caused Plaintiff harm.

112. Plaintiff is thus entitled to damages.

FOURTH CAUSE OF ACTION
Racketeering Influenced Corrupt Organizations Act
(CLO Holdco and DAF against HCM)

113. Plaintiffs respectfully incorporate the foregoing factual averments as if fully set forth herein, and further alleges the following:

114. Defendants are liable for violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. § 1961 *et seq.*, for the conduct of an enterprise through a pattern of racketeering activity.

115. HCLOF constitutes an enterprise under the RICO Act. Additionally, or in the alternative, HCM, HCLA, and HCLOF constituted an association-in-fact enterprise. The purpose of the association-in-fact was the perpetuation of Seery's position at HCM and using the

Harbourvest settlement as a vehicle to enrich persons other than the HCLOF investors, including Holdco and the DAF, and the perpetuation of HCM's holdings in collateralized loan obligations owned by HCLOF, while attempting to deny Plaintiffs the benefit of its rights of ownership.

116. The association-in-fact was bound by informal and formal connections for years prior to the elicited purpose, and then changed when HCM joined it in order to achieve the association's illicit purpose. For example, HCM is the parent and control person over HCFA, which is the portfolio manager of HCLOF pursuant to a contractual agreement—both are registered investment advisors and provide advisory and management services to HCLOF.

117. Defendants injured Plaintiffs through their continuous course of conduct of the HCM-HCLA-HCLOF association-in-fact enterprise. HCM's actions (performed through Seery and others) constitute violations of the federal wire fraud, mail fraud, fraud in connection with a case under Title 11, and/or securities fraud laws, pursuant to **18 U.S.C. § 1961(1)(B)** and **(D)**.

118. HCM operated in such a way as to violate insider trading rules and regulations when it traded with Harbourvest while it had material, non-public information that it had not supplied to Harbourvest or to Plaintiffs.

119. In or about November 2020, HCM and Harbourvest entered into discussions about settling the Harbourvest Claims. Seery's conduct of HCLOF and HCLA on behalf of HCM through the interstate mails and/or wires caused HCM to agree to the purchase of Harbourvest's interests in HCLOF.

120. On or about each of September 30, 2020, through December 31, 2020, Seery, through his conduct of the enterprise, utilized the interstate wires and/or mails to obtain or arrive at valuations of the HCLOF interests. Seery's conduct of the enterprise caused them to cease

sending the valuation reports to Plaintiffs, which eventually allowed Plaintiffs to be misled into believing that Seery had properly valued the interests.

121. On or about September 30, 2020, Seery transmitted or caused to be transmitted though the interstate wires information to HCLOF investors from HCM (via HCFA), including Harbourvest, regarding the value of HCLOF interests and underlying assets.

122. Additionally, Seery operated HCM in such a way that he concealed the true value of the HCLOF interests by utilizing the interstate wires and mails to transmit communications to the court in the form of written representations on or about December 23, 2020, and then further transmitted verbal representations of the current market value (the vastly understated one) on January 14, 2021, during live testimony.

123. However, Harbourvest was denied the full picture and the true value of the underlying portfolio. At the end of October and November of 2020, HCM had updated the net asset values of the HCLOF portfolio. According to sources at HCM at the time, the HCLOF assets were worth north of \$72,969,492 as of November 30, 2020. Harbourvest's share of that would have been \$36,484,746.

124. The HCLOF net asset value had reached \$86,440,024 as of December 31, 2021, which means that by the time Seery was testifying in the Bankruptcy Court on January 14, 2021, the fair market value of the Harbourvest Assets was \$22.5 million, when it was actually closer to \$43,202,724. Seery, speaking on behalf of HCM, knew of the distinction in value.

125. On January 14, 2021, Seery also testified that he (implying HCM, HCLA and HCLOF) had valued the Harbourvest Assets at their current valuation and at fair market value. This was not true because the valuation that was used and testified to was ancient. The ostensible purpose of this concealment was to induce Plaintiff and other interest holdings to take no action.

126. In supporting HCM’s motion to the Bankruptcy Court to approve the Harbourvest Settlement, Seery omitted the fact that HCM was purchasing the interests at a massive discount, which would violate the letter and spirit of the Adviser’s Act.

127. Seery was informed in late December 2020 at an in-person meeting in Dallas to which Seery had to fly that HCLOF and HCM had to suspend trading in MGM Studios’ securities because Seery had learned from James Dondero, who was on the Board of MGM, of a potential purchase of the company. The news of the MGM purchase should have caused Seery to revalue the HCLOF investment in MGM.

128. In or around October 2020, Seery (who controls the Board of CSS Medical) was pursuing “equatization” of CSS Medical’s debt, which would have increased the value of certain securities by 25%. In several communications through the U.S. interstate wires and/or mails, and with Plaintiffs, and the several communications with Harbourvest during the negotiations of the settlement, Seery failed to disclose these changes which were responsible in part for the ever-growing value of the HCLOF CLO portfolio.

129. Seery was at all relevant times operating as an agent of HCM.

130. This series of related violations of the wire fraud, mail fraud, and securities fraud laws, in connection with the HCM bankruptcy, constitute a continuing pattern and practice of racketeering for the purpose of winning a windfall for HCM and himself--a nearly \$30,000,000 payday under the confirmation agreement.

131. The federal RICO statute makes it actionable for one’s conduct of an enterprise to include “fraud in connection with a [bankruptcy case]”. The Advisers’ Act antifraud provisions require full transparency and accountability to an advisers’ investors and clients and does not require a showing of reliance or materiality. The wire fraud provision likewise is violated when,

as here, the interstate wires are used as part of a “scheme or artifice ... for obtaining money or property by means of false ... pretenses, [or] representations[.]”

132. Accordingly, because Defendants’ conduct violated the wire fraud and mail fraud laws, and the Advisers’ Act antifraud provisions, and their acts and omissions were in connection with the HCM Bankruptcy proceedings under Title 11, they are sufficient to bring such conduct within the purview of the RICO civil action provisions, **18 U.S.C. § 1964**.

133. Plaintiffs are thus entitled to damages, treble damages, attorneys’ fees and costs of suit, in addition to all other injunctive or equitable relief to which they are justly entitled.

FIFTH CAUSE OF ACTION
Tortious Interference
(CLO Holdco against HCM)

134. Plaintiff respectfully incorporates the foregoing factual averments as if fully set forth herein and further alleges the following:

135. At all relevant times, HCM owned a 0.6% interest in HCLOF.

136. At all relevant times, Seery and HCM knew that Plaintiff had specific rights in HCLOF under the Company Agreement, § 6.2.

137. Section 6.2 of HCLOF Company agreement provides that when a member “other than ... CLO Holdco [Plaintiff] or a Highland Affiliate,” intends to sell its interest in HCLOF to a third party (i.e., not an affiliate of the member), then the other members have the first right of refusal to purchase those interests pro rata for the same price that the member has agreed to sell.

138. HCM, through Seery, tortiously interfered with Plaintiff’s contractual rights with HCLOF by, among other things, diverting the Harbourvest Interests in HCLOF to HCM without giving HCLOF or Plaintiff the option to purchase those assets at the same favorable price that HCM obtained them.

139. HCM and Seery tortiously interfered with Plaintiff's contractual rights with HCLOF by, among other things, misrepresenting the fair market value as \$22.5 million and concealing the current value of those interests.

140. But for HCM and Seery's tortious interference, Plaintiff would have been able to acquire the Harbourvest Interests at a highly favorable price. HCM and Seery's knowledge of the rights and intentional interference with these rights has caused damage to Plaintiff CLO Holdco.

141. Plaintiff is therefore entitled to damages from HCM and Seery, as well as exemplary damages.

VI.

JURY DEMAND

142. Plaintiff demands trial by jury on all claims so triable.

VII.

PRAYER FOR RELIEF

143. Wherefore, for the foregoing reasons, Plaintiffs respectfully pray that the Court enter judgment in its favor and against Defendants, jointly and severally, for:

- a. Actual damages;
- b. Disgorgement;
- c. Treble damages;
- d. Exemplary and punitive damages;
- e. Attorneys' fees and costs as allowed by common law, statute or contract;
- f. A constructive trust to avoid dissipation of assets;
- g. All such other relief to which Plaintiff is justly entitled.

Dated: April 12, 2021

Respectfully submitted,

SBAITI & COMPANY PLLC

/s/ Mazin A. Sbaiti

Mazin A. Sbaiti

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APPENDIX 12

GRANT SCOTT - 1/21/2021

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:)	
)	Chapter 11
HIGHLAND CAPITAL MANAGEMENT,)	
L.P.)	Case No.
)	19-34054-sgj11
Debtor.)	
-----)	
HIGHLAND CAPITAL MANAGEMENT,)	
L.P.,)	
Plaintiff,)	
)	Adversary
vs.)	Proceeding No.
)	21-03000-sgj
HIGHLAND CAPITAL MANAGEMENT)	
FUND ADVISORS, L.P.; NEXPOINT)	
ADVISORS, L.P.; HIGHLAND)	
INCOME FUND; NEXPOINT)	
STRATEGIC OPPORTUNITIES FUND;)	
NEXPOINT CAPITAL, INC.; and)	
CLO HoldCo, LTD.,)	
)	
Defendants.)	

VIDEOCONFERENCE DEPOSITION OF Grant SCOTT

Thursday, 21st of January, 2021

Reported by: Lisa A. Wheeler, RPR, CRR

Job No: 188910

<p style="text-align: right;">Page 2</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 January 21, 2021</p> <p>3 2:02 p.m.</p> <p>4</p> <p>5</p> <p>6 Videoconference deposition of Grant</p> <p>7 SCOTT, pursuant to the Federal Rules of</p> <p>8 Civil Procedure before Lisa A. Wheeler,</p> <p>9 RPR, CRR, a Notary Public of the State of</p> <p>10 North Carolina. The court reporter</p> <p>11 reported the proceeding remotely and the</p> <p>12 witness was present via videoconference.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 REMOTE APPEARANCES:</p> <p>3 PACHULSKI STANG ZIEHL & JONES</p> <p>4 Attorneys for Debtor</p> <p>5 780 Third Avenue</p> <p>6 New York, NY 10017</p> <p>7 BY: JOHN MORRIS, ESQ.</p> <p>8</p> <p>9 LATHAM & WATKINS</p> <p>10 Attorneys for UBS</p> <p>11 885 Third Avenue</p> <p>12 New York, NY 10022</p> <p>13 BY: SHANNON McLAUGHLIN, ESQ.</p> <p>14</p> <p>15 SIDLEY AUSTIN</p> <p>16 Attorneys for the Creditors Committee</p> <p>17 2021 McKinney Avenue</p> <p>18 Dallas, TX 75201</p> <p>19 BY: PENNY REID, ESQ.</p> <p>20 ALYSSA RUSSELL, ESQ.</p> <p>21 PAIGE MONTGOMERY, ESQ.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 REMOTE APPEARANCES: (Continued)</p> <p>3 KING & SPALDING</p> <p>4 Attorneys for Highland CLO Funding, Ltd.</p> <p>5 500 West 2nd Street</p> <p>6 Austin, TX 78701</p> <p>7 BY: REBECCA MATSUMURA, ESQ.</p> <p>8</p> <p>9 K&L GATES</p> <p>10 Attorneys for Highland Capital Management</p> <p>11 Fund Advisors, L.P., et al.</p> <p>12 4350 Lassiter at North Hills Avenue</p> <p>13 Raleigh, NC 27609</p> <p>14 BY: A. LEE HOGEWOOD, III, ESQ.</p> <p>15 EMILY MATHER, ESQ.</p> <p>16</p> <p>17 HELLER DRAPER & HORN</p> <p>18 Attorneys for The Dugaboy Investment Trust</p> <p>19 and The Get Good Trust</p> <p>20 650 Poydras Street</p> <p>21 New Orleans, LA 70130</p> <p>22 BY: MICHAEL LANDIS, ESQ.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 REMOTE APPEARANCES: (Continued)</p> <p>3 KANE RUSSELL COLEMAN & LOGAN</p> <p>4 Attorneys for Defendant CLO HoldCo Limited</p> <p>5 Bank of America Plaza</p> <p>6 901 Main Street</p> <p>7 Dallas, TX 75202</p> <p>8 BY: BRIAN CLARK, ESQ.</p> <p>9 JOHN KANE, ESQ.</p> <p>10</p> <p>11 ALSO PRESENT: La Asia Canty</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 G R A N T S C O T T ,</p> <p>3 called as a witness, having been duly sworn</p> <p>4 by a Notary Public, was examined and</p> <p>5 testified as follows:</p> <p>6 MR. MORRIS: Good afternoon. My</p> <p>7 name is John Morris. I'm an attorney with</p> <p>8 Pachulski Stang Ziehl & Jones, a law firm</p> <p>9 who represents the debtor in the bankruptcy</p> <p>10 known as In Re: Highland Capital</p> <p>11 Management, L.P., and we're here today for</p> <p>12 the deposition of Grant Scott.</p> <p>13 Before I begin, I would just like to</p> <p>14 have confirmation on the record that</p> <p>15 everybody here who's representing their</p> <p>16 respective parties agrees that this</p> <p>17 deposition can be used in evidence in any</p> <p>18 subsequent hearing, notwithstanding the</p> <p>19 fact that it's being conducted remotely,</p> <p>20 and that the witness is not in the same</p> <p>21 room as the court reporter.</p> <p>22 Does anybody have an objection to</p> <p>23 the admissibility of the transcript subject</p> <p>24 to any reservation of -- of actual</p> <p>25 objections on the record to using this</p>	<p style="text-align: right;">Page 7</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 transcript going forward?</p> <p>3 Okay. Nobody's spoken up, so I --</p> <p>4 I'd like to begin.</p> <p>5 EXAMINATION</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Good afternoon, Mr. Scott. As I</p> <p>8 mentioned, my name is John Morris, and we're</p> <p>9 here for your deposition today. Have you ever</p> <p>10 been deposed before?</p> <p>11 A. On two occasions.</p> <p>12 Q. And -- and when did the -- when did</p> <p>13 those depositions take place?</p> <p>14 A. This past October and maybe six to</p> <p>15 eight years ago.</p> <p>16 Q. Okay. Can you just tell me</p> <p>17 generally what the subject matter was of the</p> <p>18 deposition this past October.</p> <p>19 A. It was relating to Jim Dondero's --</p> <p>20 it was a family law issue in -- in -- with</p> <p>21 respect to Jim Dondero.</p> <p>22 Q. Okay. And did you testify in a</p> <p>23 courtroom, or was it a deposition like this?</p> <p>24 A. I -- right here, actually.</p> <p>25 Q. Okay. Super. And -- and what about</p>
<p style="text-align: right;">Page 8</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 the -- the deposition six to eight years ago,</p> <p>3 do you have a recollection as to what that was</p> <p>4 about?</p> <p>5 A. Yeah. It was a -- it was a patent I</p> <p>6 wrote for Samsung Electronics.</p> <p>7 Q. Okay.</p> <p>8 A. And as being the person that I --</p> <p>9 that wrote it and the patent was in litigation,</p> <p>10 not -- not being handled by me, but by virtue</p> <p>11 of having written the patent, I was -- I was</p> <p>12 deposed --</p> <p>13 Q. Okay. So you --</p> <p>14 A. -- on the -- on the patent.</p> <p>15 Q. Okay. So you've had a little bit of</p> <p>16 experience with depositions. But just</p> <p>17 generally speaking, I'm going to ask you a</p> <p>18 series of questions. It's very important that</p> <p>19 you allow me to finish my question before you</p> <p>20 begin your answer.</p> <p>21 Is that fair?</p> <p>22 A. Absolutely.</p> <p>23 Q. And I will certainly try to extend</p> <p>24 the same courtesy to you, but if I -- if I step</p> <p>25 on your words, will you let me know that?</p>	<p style="text-align: right;">Page 9</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. Okay.</p> <p>3 Q. And if there's anything that I ask</p> <p>4 that you don't understand, will you let me know</p> <p>5 that as well?</p> <p>6 A. Yes. I'll try -- I'll do my best.</p> <p>7 Q. Okay. So this is a virtual</p> <p>8 deposition. We're not in the same room. I am</p> <p>9 going to be showing you documents today. The</p> <p>10 documents will be put up on the screen. This</p> <p>11 isn't a -- a trick of any kind. If at any time</p> <p>12 you see a document up on the screen and either</p> <p>13 you believe or you have any reason to want to</p> <p>14 read other portions of the document, will you</p> <p>15 let me know that?</p> <p>16 A. Yes, I -- yes, I will. Uh-huh.</p> <p>17 Q. With respect to the Dondero family</p> <p>18 matter, I really don't want to go into the</p> <p>19 substance of that, but I do want to know</p> <p>20 whether you testified voluntarily in that</p> <p>21 matter or whether you -- whether you testified</p> <p>22 pursuant to subpoena.</p> <p>23 A. I would have done that, but the</p> <p>24 first time I found out about it was a -- was a</p> <p>25 subpoena that I received. I wasn't given the</p>

<p style="text-align: right;">Page 10</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 choice.</p> <p>3 Q. Okay. And do you recall who served</p> <p>4 the subpoena on you? Actually, let me ask a</p> <p>5 different question because I'm really not</p> <p>6 interested in the -- in the details.</p> <p>7 Did Mr. Dondero serve that subpoena</p> <p>8 on you or did somebody else?</p> <p>9 A. His counsel for his ex-wife.</p> <p>10 Q. Mr. -- so -- so the lawyer acting on</p> <p>11 behalf of Mr. Dondero's ex-wife served you with</p> <p>12 the subpoena?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. You're familiar with an</p> <p>15 entity called CLO HoldCo Limited; is that</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what that entity is?</p> <p>19 A. Yes.</p> <p>20 Q. What -- what -- can you describe for</p> <p>21 me what CLO HoldCo Limited is.</p> <p>22 A. It's a holding company of assets</p> <p>23 including collateralized loan obligation-type</p> <p>24 assets. That's a portion of the overall</p> <p>25 portfolio. It's an organization that is</p>	<p style="text-align: right;">Page 11</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 integrated with other entities as part of a</p> <p>3 charitable -- loosely what we -- what we refer</p> <p>4 to as a charitable foundation equivalent.</p> <p>5 Yeah.</p> <p>6 Q. All right. We'll -- we'll get into</p> <p>7 some detail about the corporate structure in a</p> <p>8 moment. Do you personally play any role at CLO</p> <p>9 HoldCo Limited?</p> <p>10 A. Yes. My technical title is</p> <p>11 director, but I -- I don't necessarily know</p> <p>12 specifically what that title means other than I</p> <p>13 act, as I understand it, as -- as a trustee for</p> <p>14 those -- for those assets.</p> <p>15 Q. And where did you get that</p> <p>16 understanding?</p> <p>17 A. Approximately ten years ago from the</p> <p>18 group that -- that set up the hierarchy.</p> <p>19 Q. And which group set up the</p> <p>20 hierarchy?</p> <p>21 A. Employees at Jim Don- -- as I</p> <p>22 understand it, employees of Highland along with</p> <p>23 outside counsel, as I understand it, and also,</p> <p>24 I guess, input from -- from Jim Dondero.</p> <p>25 Q. At the time that you assumed the</p>
<p style="text-align: right;">Page 12</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 role of director of CLO HoldCo Limited, was</p> <p>3 that entity already in existence?</p> <p>4 A. I believe so. I'm not certain. I'm</p> <p>5 not certain.</p> <p>6 Q. What are your duties and</p> <p>7 responsibilities as a director of CLO HoldCo</p> <p>8 Limited?</p> <p>9 A. Well, my day-to-day responsibilities</p> <p>10 are to interface with -- with the manager of</p> <p>11 the -- of the assets of CLO. I do have some</p> <p>12 role in -- with respect to some of the entities</p> <p>13 that are -- I -- I have a limited role with</p> <p>14 respect to a subset of the charitable</p> <p>15 foundations that receive money from the CLO</p> <p>16 HoldCo structure, which is commonly referred to</p> <p>17 as the DAF. There's -- sometimes those are</p> <p>18 used interchangeably.</p> <p>19 Q. What terms are used interchangeably?</p> <p>20 A. Well, the DAF and CLO HoldCo are</p> <p>21 frequently -- by -- by other people they're --</p> <p>22 it's the short -- it's the -- I guess it's</p> <p>23 easier to use the acronym DAF than CLO HoldCo</p> <p>24 Limited, so I'm frequently having to -- there</p> <p>25 is a DAF entity so -- that's above -- above CLO</p>	<p style="text-align: right;">Page 13</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 in terms of the management, and so it's</p> <p>3 frequently confusing and I'm having to clarify</p> <p>4 at times which entity we're talking about,</p> <p>5 but -- but other parties frequently use those</p> <p>6 terms interchangeably.</p> <p>7 Q. Okay.</p> <p>8 MR. MORRIS: Lisa, when we use the</p> <p>9 phrase DAF, because you'll hear that a lot,</p> <p>10 it's all caps, D-A-F.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. You mentioned that you interface</p> <p>13 with the manager of assets of CLOs. Do I have</p> <p>14 that right?</p> <p>15 A. Well, of all the assets.</p> <p>16 Q. Okay. Who is the manager of the</p> <p>17 assets that you're referring to?</p> <p>18 A. Highland Capital Management.</p> <p>19 Q. Highland Capital Management manages</p> <p>20 all of the assets -- withdrawn.</p> <p>21 Is it your understanding that</p> <p>22 Highland Capital Management manages all the</p> <p>23 assets that are owned by CLO HoldCo Limited?</p> <p>24 A. Yes.</p> <p>25 Q. Who makes the investment decisions</p>

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2 on behalf of CLO HoldCo Limited?

3 A. Highland -- those managers that you

4 mentioned.

5 Q. Okay. I didn't mention anybody in

6 particular.

7 A. Oh, I'm sorry. The -- the -- the

8 money manager -- could you repeat that

9 question? I'm sorry. I'm so sorry.

10 Q. Can you just -- can you just

11 identify for me the person who makes investment

12 decisions on behalf of CLO HoldCo Limited.

13 A. It's -- well, it's -- it's persons

14 as I understand it. I inter- -- interface with

15 a -- with a group, but it's -- it's Highland

16 Capital employee -- Highland Capital Management

17 employees.

18 Q. Okay. Can you just name any of

19 them, please.

20 A. Hunter Covitz, Jim Dondero. Mark

21 Okada's no longer there, but I believe he was

22 involved, and there are others that I interface

23 with.

24 Q. Can you -- can you recall the name

25 of anybody other than Mr. Okada and Mr. Dondero

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2 Q. Is it fair to say that you do not

3 make decisions, investment decisions, on behalf

4 of CLO HoldCo Limited?

5 A. Yes.

6 Q. Does CLO HoldCo Limited have any

7 employees that you know of?

8 A. No.

9 Q. Does CLO HoldCo have any --

10 withdrawn.

11 Does CLO HoldCo Limited have any

12 officers that you know of?

13 A. No.

14 Q. So am I correct that you're the only

15 representative in the world of CLO HoldCo in

16 terms of being a director, officer, or

17 employee?

18 A. Yes.

19 Q. Do you receive any compensation from

20 CLO HoldCo for your services as the director?

21 A. I do now.

22 Q. When did that begin?

23 A. I believe in the middle of 2012.

24 Q. Okay. And had you served as a

25 director prior to that time without

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2 and Mr. Covitz?

3 A. Yeah. Over the years I've worked

4 with Tim Cournoyer, Thomas Surgent, but I

5 think -- I think that's the core -- the core

6 group.

7 Q. All right. And is there anybody

8 within that core group who has the final

9 decision-making authority concerning the

10 investments in CLO HoldCo Limited?

11 A. I don't -- I don't know. I'm sorry.

12 Say that again. I just want to -- I'm sorry.

13 I'm trying to be -- I'm not trying to -- I'm

14 trying to be --

15 Q. I understand. And --

16 A. Sorry. If you could just repeat it.

17 Q. Sure. Is there any particular

18 person who has the final decision-making

19 authority for investments that are being made

20 on behalf of CLO HoldCo Limited?

21 A. Amongst that group I am -- I am not

22 sure.

23 Q. Okay. So are there any other

24 directors of CLO HoldCo besides yourself?

25 A. No.

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2 compensation?

3 A. Yes.

4 Q. And have you been the sole director

5 of CLO HoldCo Limited since the time of your

6 appointment approximately ten years ago?

7 A. Yes.

8 Q. Nobody else has served in that

9 capacity; is that right?

10 A. That is correct.

11 Q. There have been no employees or

12 officers of that entity during the time that

13 you've served as director, correct?

14 A. Yes.

15 Q. Do you know who formed CLO HoldCo

16 Limited?

17 A. I do not.

18 Q. Do you know why CLO HoldCo Limited

19 was formed?

20 A. I believe so.

21 Q. Can you explain to me why -- your

22 understanding as to why CLO HoldCo was formed.

23 A. So as I understand things, Jim

24 Dondero wanted to create a charitable

25 foundation-like entity or entities, and tax

<p style="text-align: right;">Page 18</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 people particularly, I guess, finance people,</p> <p>3 lawyers, they created this network of entities</p> <p>4 to carry out that charitable goal. At one</p> <p>5 point, I thought it was a novel type of</p> <p>6 institution, if you want to call it, or a</p> <p>7 novel -- novel type of group of entities, but</p> <p>8 over time, I came to understand that although</p> <p>9 not cookie cutter, it -- it follows a general</p> <p>10 arrangement of entities for legal and tax</p> <p>11 purposes, compliance purposes, IRS purposes,</p> <p>12 various insulating purposes to maintain -- or</p> <p>13 to meet the necessary requisites to carry out</p> <p>14 that charitable function.</p> <p>15 Q. When did you come to that</p> <p>16 understanding?</p> <p>17 A. Over the last couple of years. I</p> <p>18 periodically have to refresh my recollection.</p> <p>19 It's -- it's fairly complex.</p> <p>20 Q. Okay. In your capacity as the sole</p> <p>21 director of CLO HoldCo Limited, do you report</p> <p>22 to anybody?</p> <p>23 A. No.</p> <p>24 Q. Other than interfacing with the</p> <p>25 manager of the assets of the CLO, do you have</p>	<p style="text-align: right;">Page 19</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 any other duties and responsibilities as a</p> <p>3 director of CLO HoldCo Limited?</p> <p>4 A. Yes. Sorry. My mouth is a little</p> <p>5 dry.</p> <p>6 Q. By the way, if you ever need to take</p> <p>7 a break, just let me know.</p> <p>8 A. Okay. Thank you. Now I forgot your</p> <p>9 question. The -- the -- the --</p> <p>10 Q. I understand.</p> <p>11 A. The answer -- the -- the answer is</p> <p>12 yes. I -- why don't you ask -- ask your</p> <p>13 question again. I'm sorry.</p> <p>14 Q. Sure. Other than interfacing with</p> <p>15 the manager of the assets of the CLO, do you</p> <p>16 have any other duties and responsibilities as</p> <p>17 the sole director of CLO HoldCo Limited?</p> <p>18 A. Yes. So Highland Capital because of</p> <p>19 its -- the way it's set up to manage or service</p> <p>20 CLO HoldCo and the DAF, it has a relatively</p> <p>21 large group of people that I have to interface</p> <p>22 with to do everything from -- everything from</p> <p>23 soup to nuts. Finances and the money</p> <p>24 management is one aspect, but most of my</p> <p>25 time -- on a day-to-day or week-to-week basis,</p>
<p style="text-align: right;">Page 20</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 most of my time is spent working with the</p> <p>3 various compliance and other people for</p> <p>4 addressing issues of get- -- you know, getting</p> <p>5 taxes filed. It runs -- it runs the gamut of</p> <p>6 every aspect of the organization being -- being</p> <p>7 handled by Highland.</p> <p>8 Q. Okay.</p> <p>9 A. You know, unlike -- unlike my</p> <p>10 financial -- unlike a financial planner that</p> <p>11 might, you know, manage assets, they -- they do</p> <p>12 it all, and I interface with them regularly to</p> <p>13 maintain -- mostly to deal with compliance</p> <p>14 issues.</p> <p>15 Q. Who's the com- -- is there a person</p> <p>16 who's in charge of compliance?</p> <p>17 A. I believe Thomas Surgent. I</p> <p>18 mentioned him. I believe he also has that</p> <p>19 role, but it's -- you know, they do have</p> <p>20 turnover, I guess, in that. It's -- I guess</p> <p>21 they refer to it as the back office. I've</p> <p>22 heard that term be used, but -- basically, it's</p> <p>23 a large number of people that have changed over</p> <p>24 time, but it's -- it's more -- I believe it's</p> <p>25 more than one collectively.</p>	<p style="text-align: right;">Page 21</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. How much time do you devote -- you</p> <p>3 know, can you estimate either on a weekly or a</p> <p>4 monthly basis how many -- how much time do you</p> <p>5 devote to serving as the director of CLO HoldCo</p> <p>6 Limited?</p> <p>7 A. I thought about that. Well, let --</p> <p>8 let's put it this way: There was the</p> <p>9 prebankruptcy time I spent per day, and then</p> <p>10 there was the postbankruptcy time I've spent</p> <p>11 per -- per -- or per week -- excuse me, or</p> <p>12 per -- I've estimated it as probably a day --</p> <p>13 it's so intermittent it's -- it's hard, okay?</p> <p>14 It's -- I don't dedicate my Mondays to only</p> <p>15 doing that and then Tuesday through Friday I</p> <p>16 don't, right? I -- it's -- I have to piece</p> <p>17 together everything that occurs during the</p> <p>18 week. There might be some weeks where I don't</p> <p>19 have any contact. There might be every day of</p> <p>20 the week I have multiple contact. There may be</p> <p>21 days where from morning to night there is so</p> <p>22 much contact, it precludes me from doing</p> <p>23 anything else meaningfully. So -- but I would</p> <p>24 estimate it's probably three or four -- maybe</p> <p>25 three days, four days a month when things are</p>

<p style="text-align: right;">Page 22</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 going well.</p> <p>3 Q. And -- and I think you -- you</p> <p>4 testified just now that there was kind of a</p> <p>5 difference between prebankruptcy and</p> <p>6 postbankruptcy. Do I have that right?</p> <p>7 A. Yes.</p> <p>8 Q. And can you tell me -- is it fair to</p> <p>9 say that before the bankruptcy, you didn't</p> <p>10 devote much time to CLO HoldCo, or do I have</p> <p>11 that wrong?</p> <p>12 A. Well, I -- just the time that --</p> <p>13 that I mentioned just -- I'm sorry. The -- the</p> <p>14 time I just mentioned now when you asked me,</p> <p>15 that was the pre period. Excuse me. I haven't</p> <p>16 talked about the postbankruptcy period.</p> <p>17 Q. So are you -- are you -- are you</p> <p>18 devoting more time or less time since the</p> <p>19 bankruptcy?</p> <p>20 A. Much more.</p> <p>21 Q. Much more since the bankruptcy</p> <p>22 filing?</p> <p>23 A. Yes.</p> <p>24 Q. And so why did the bankruptcy filing</p> <p>25 cause you to spend more time as a director of</p>	<p style="text-align: right;">Page 23</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 CLO HoldCo Limited?</p> <p>3 A. Well, initially, and this would</p> <p>4 be -- this would be late 2019, it was --</p> <p>5 aft- -- after the bankruptcy was -- was filed</p> <p>6 and I obtained counsel, who are on the phone</p> <p>7 now -- or in this deposition now, excuse me,</p> <p>8 that was -- that transition occurred because</p> <p>9 CLO was a debtor -- excuse me, a creditor to --</p> <p>10 to the debtor and had to take steps to</p> <p>11 establish its -- its claim. So if I understand</p> <p>12 the -- things correctly, the -- the debtor</p> <p>13 identified as part of the filing -- I don't</p> <p>14 know how bankruptcy works, but if I under- --</p> <p>15 if my recollection is correct, there's a</p> <p>16 hierarchy from biggest to smallest, and we were</p> <p>17 relatively high up. And when I say we or I,</p> <p>18 I -- I just mean CLO was relatively high up.</p> <p>19 And so initially, for the first period of so</p> <p>20 many months, the -- the exclusive focus was on</p> <p>21 our position as a creditor -- a creditor having</p> <p>22 a certain claim against a debtor.</p> <p>23 Q. Can you describe for me your</p> <p>24 understanding of the nature of the claim</p> <p>25 against the debtor.</p>
<p style="text-align: right;">Page 24</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. It was various obligations that were</p> <p>3 owed to -- to CLO, things that had been</p> <p>4 previously donated or -- or agreements that had</p> <p>5 been set up that transferred certain assets,</p> <p>6 and it was basically the -- the -- the amounts</p> <p>7 were derived from those sorts of transactions.</p> <p>8 Q. Okay. You're a patent lawyer; is</p> <p>9 that right?</p> <p>10 A. I -- I'm exclusively a patent</p> <p>11 attorney, yes.</p> <p>12 Q. Have you been a patent lawyer on an</p> <p>13 exclusive basis since the time you graduated</p> <p>14 from law school?</p> <p>15 A. From law school, yes.</p> <p>16 Q. Can you just describe for me</p> <p>17 generally your educational background.</p> <p>18 A. So I'm an electrical engineer by</p> <p>19 training. I graduated from the University of</p> <p>20 Virginia in 1984. I then went to graduate</p> <p>21 school at the University of Illinois. I</p> <p>22 received my master's degree in 1986, and then I</p> <p>23 immediately joined IBM Research at the Thomas</p> <p>24 Watson Institute in New York where I was a --</p> <p>25 my title was research scientist, but I was -- I</p>	<p style="text-align: right;">Page 25</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 guess I was more of a research engineer, if</p> <p>3 that matters. And I did that until I</p> <p>4 transitioned -- or I began law school in the</p> <p>5 fall of 1988, and then I graduated law school</p> <p>6 in May of 1991.</p> <p>7 Q. And where did you go to law school?</p> <p>8 A. University of North Carolina.</p> <p>9 Q. Do you have any formal training in</p> <p>10 investing or finance?</p> <p>11 A. I do not.</p> <p>12 Q. Do you hold yourself out as an</p> <p>13 expert in any field of investment?</p> <p>14 A. None -- none at all.</p> <p>15 Q. Have you had any formal training</p> <p>16 with respect to compliance issues? You</p> <p>17 mentioned compliance issues earlier.</p> <p>18 A. No.</p> <p>19 Q. Now, do you have any knowledge about</p> <p>20 compliance rules or regulations?</p> <p>21 A. Minimal that I've -- that have</p> <p>22 occurred organically but -- but generally, no.</p> <p>23 Q. You don't hold yourself out as an</p> <p>24 expert in com- -- in the area of compliance,</p> <p>25 correct?</p>

<p style="text-align: right;">Page 26</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. No. No. I'm -- no.</p> <p>3 Q. Do you have any particular</p> <p>4 investment philosophy or strategy?</p> <p>5 MR. CLARK: I'm going to object to</p> <p>6 the form of the question. And, John,</p> <p>7 can -- can we get an agreement that -- I</p> <p>8 know you were objecting just simply on the</p> <p>9 form basis yesterday -- that objection to</p> <p>10 form is sufficient today?</p> <p>11 MR. MORRIS: Sure.</p> <p>12 MR. CLARK: Okay. And I object to</p> <p>13 form. Grant, you can answer to the extent</p> <p>14 you can.</p> <p>15 THE WITNESS: I forget the question</p> <p>16 now that you interrupted. I'm sorry.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. So -- so -- and I'm going to ask a</p> <p>19 different question because in hindsight, that's</p> <p>20 a good objection.</p> <p>21 In your capacity as the director</p> <p>22 of -- withdrawn.</p> <p>23 Do the employees of Highland that</p> <p>24 you identified earlier, do they make investment</p> <p>25 decisions on behalf of CLO HoldCo Limited</p>	<p style="text-align: right;">Page 27</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 without your prior knowledge on occasion?</p> <p>3 A. On occasion, they do.</p> <p>4 Q. So there's no rule that your prior</p> <p>5 approval is needed before investments are made,</p> <p>6 right?</p> <p>7 A. I don't know whether they have an</p> <p>8 internal guideline as to the amount that</p> <p>9 triggers when they get in touch with me or</p> <p>10 whether it's a new -- a change, something new,</p> <p>11 or -- versus recurring. So I don't -- I don't</p> <p>12 know what they use internally for that metric.</p> <p>13 Q. Okay. Are you aware of any</p> <p>14 guideline that was ever used by the Highland</p> <p>15 employees whereby they were required to obtain</p> <p>16 your consent prior to effectuating transactions</p> <p>17 on behalf of CLO HoldCo Limited?</p> <p>18 A. I understand there was one or more,</p> <p>19 but I do not know that.</p> <p>20 Q. Okay. Did you ever see such a</p> <p>21 policy or list of rules that would require your</p> <p>22 prior consent before the Highland employees</p> <p>23 effectuated transactions on behalf of CLO</p> <p>24 HoldCo Limited?</p> <p>25 A. Possibly some time ago, but I -- I</p>
<p style="text-align: right;">Page 28</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 don't recall.</p> <p>3 Q. Okay. So -- withdrawn. I'll --</p> <p>4 I'll go on.</p> <p>5 How did you come to be the director</p> <p>6 of CLO HoldCo?</p> <p>7 A. I was asked either by Jim Dondero</p> <p>8 or -- directly or indirectly by -- by Jim</p> <p>9 Dondero.</p> <p>10 Q. And who is Jim Dondero?</p> <p>11 A. Well, at the time, he was the head</p> <p>12 or one of the heads of Highland Capital</p> <p>13 Management, a friend of mine.</p> <p>14 Q. How long have you known Mr. Dondero?</p> <p>15 A. Since high school so that -- 1976.</p> <p>16 Q. Where did you and Mr. Dondero grow</p> <p>17 up?</p> <p>18 A. In northern New Jersey.</p> <p>19 Q. Do you consider him among the</p> <p>20 closest friends you have?</p> <p>21 A. I think he is my closest friend.</p> <p>22 Q. Did you two go to college together?</p> <p>23 A. We actually -- for the last -- last</p> <p>24 two years I was at UVA, University of Virginia,</p> <p>25 excuse me, he and I were -- were at UVA. So we</p>	<p style="text-align: right;">Page 29</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 did not start out at UVA initially, but -- but</p> <p>3 we both transferred -- I transferred my</p> <p>4 sophomore year. I was actually a chemical</p> <p>5 engineer at the University of Delaware when I</p> <p>6 transferred in, and then he transferred in his</p> <p>7 junior year. So we were there at college for</p> <p>8 two years.</p> <p>9 Q. And -- and based on your</p> <p>10 relationship with him, is it your understanding</p> <p>11 that one of the reasons he chose to transfer to</p> <p>12 UVA is -- is to -- because you were there?</p> <p>13 A. Oh, no. He transferred -- he --</p> <p>14 he -- he transferred there because of the -- so</p> <p>15 he went to the University of -- he -- he went</p> <p>16 to Virginia Tech University, which is more</p> <p>17 known as being an engineering school, which I</p> <p>18 might have wanted to go to, and less a finance</p> <p>19 business school. And if I understand things</p> <p>20 correctly, and I believe I do, he transferred</p> <p>21 to UVA because of the well-known</p> <p>22 business/finance program, accounting program.</p> <p>23 Q. And did you -- did you and</p> <p>24 Mr. Dondero become roommates at UVA?</p> <p>25 A. We weren't roommates, but we lived</p>

<p style="text-align: right;">Page 30</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 in the -- we were housemates. I'm sorry. We</p> <p>3 were housemates.</p> <p>4 Q. So you shared a house together. How</p> <p>5 would you describe your relationship with</p> <p>6 Mr. Dondero today?</p> <p>7 A. It's -- it's been strained a while,</p> <p>8 for some time, but -- but generally, very good.</p> <p>9 Good to very good.</p> <p>10 Q. Without -- without getting personal</p> <p>11 here, can you just generally identify the</p> <p>12 source of the strain that you described.</p> <p>13 A. This -- I think it would be fair to</p> <p>14 say that this bankruptcy, particularly events</p> <p>15 in 2020 so some months after the bankruptcy was</p> <p>16 declared, things have become -- we -- we still</p> <p>17 have a close friendship, but -- but things</p> <p>18 are -- are a bit -- are a bit more difficult.</p> <p>19 Q. Were you ever married?</p> <p>20 A. I've never been married.</p> <p>21 Q. Did you serve as Mr. Dondero's best</p> <p>22 man at his wedding?</p> <p>23 A. I did.</p> <p>24 Q. Is it fair to say that -- that</p> <p>25 Mr. Dondero trusts you?</p>	<p style="text-align: right;">Page 31</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 MR. CLARK: Objection, form.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Withdrawn.</p> <p>5 Do you believe that Mr. Dondero</p> <p>6 trusts you?</p> <p>7 A. I do.</p> <p>8 Q. Over the years, is it fair to say</p> <p>9 that Mr. Dondero has confided in you?</p> <p>10 MR. CLARK: Objection, form.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. You can answer if you understand it.</p> <p>13 A. I think so.</p> <p>14 Q. I -- I -- what's your answer? You</p> <p>15 think so?</p> <p>16 A. Maybe you can de- -- I think of</p> <p>17 confide as -- could you define confide, please.</p> <p>18 Q. Sure. Is it -- is it fair to say</p> <p>19 that over the -- let me -- you've known</p> <p>20 Mr. Dondero for almost 45 years, right?</p> <p>21 A. Yes.</p> <p>22 Q. And you consider him to be your</p> <p>23 closest friend in the world, right?</p> <p>24 A. Yes.</p> <p>25 Q. And is it fair to say over the</p>
<p style="text-align: right;">Page 32</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 course of those 45 years, Mr. Dondero has</p> <p>3 shared confidential information with you that</p> <p>4 he didn't want you to reveal publicly to other</p> <p>5 people?</p> <p>6 A. Yes.</p> <p>7 Q. And is it your understanding that</p> <p>8 because of the nature of your relationship with</p> <p>9 him, he asked you to serve as the director of</p> <p>10 CLO HoldCo Limited?</p> <p>11 A. Yes. I believe it's because he --</p> <p>12 he trusted -- trusted me with -- with assets</p> <p>13 relating to his charitable vision. I -- I --</p> <p>14 yeah. Yes.</p> <p>15 Q. And is it your understanding that he</p> <p>16 thought you would help him execute his</p> <p>17 charitable vision?</p> <p>18 A. That was the point of attraction</p> <p>19 initially. It wasn't for money. I wasn't</p> <p>20 being paid. That was -- the charitable mission</p> <p>21 was the attraction.</p> <p>22 Q. Does Mr. Dondero play any role in</p> <p>23 the management of the CLO HoldCo Limited asset</p> <p>24 pool?</p> <p>25 MR. CLARK: Objection, form.</p>	<p style="text-align: right;">Page 33</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. I'm sorry. Could you repeat that?</p> <p>3 My -- my screen went small and then big again.</p> <p>4 I was distracted.</p> <p>5 Q. What role does Mr. Dondero play with</p> <p>6 respect to the management of the CLO HoldCo</p> <p>7 Limited asset pool?</p> <p>8 MR. CLARK: Objection, form.</p> <p>9 A. He is with the company that manages</p> <p>10 that asset pool. He's one of the people I</p> <p>11 named previously as managing those assets.</p> <p>12 Q. He is -- he -- he is the -- do you</p> <p>13 understand that he has the final</p> <p>14 decision-making power with respect to the</p> <p>15 management of the assets that are held by CLO</p> <p>16 HoldCo Limited?</p> <p>17 MR. CLARK: Objection, form.</p> <p>18 A. I believe I ansel -- answered that</p> <p>19 previously. I -- I don't know who has -- for</p> <p>20 certainty I do not know who has that within</p> <p>21 that company. I don't. If -- if -- I -- I</p> <p>22 don't know, consistent with my prior answer.</p> <p>23 Q. Did you ever ask anybody who had the</p> <p>24 final decision-making authority for investments</p> <p>25 on behalf of CLO HoldCo Limited?</p>

<p style="text-align: right;">Page 34</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. I -- I did not.</p> <p>3 Q. Did you ever make a decision on</p> <p>4 behalf of -- withdrawn.</p> <p>5 In your capacity as a director --</p> <p>6 withdrawn.</p> <p>7 In your capacity as the sole</p> <p>8 director of CLO HoldCo Limited, can you think</p> <p>9 of any decision that you've ever made that</p> <p>10 Mr. Dondero disagreed with?</p> <p>11 A. Since -- prior to the bankruptcy,</p> <p>12 no, not that I'm aware of.</p> <p>13 Q. And since the bankruptcy?</p> <p>14 A. There are decisions that I've made</p> <p>15 that he's disagreed with.</p> <p>16 Q. Can you identify them?</p> <p>17 A. Yes.</p> <p>18 Q. Please do so.</p> <p>19 A. Okay. So the reason I'm pausing is</p> <p>20 I'm trying to put these in chronological order</p> <p>21 and, at the same time, identify maybe some of</p> <p>22 the more important ones versus the lesser</p> <p>23 important ones. One of the decisions I made</p> <p>24 related to a request that I received from the</p> <p>25 independent board of Highland. I don't know</p>	<p style="text-align: right;">Page 35</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 how the request was transmitted to me, but I</p> <p>3 believe the way it played out is as follows: I</p> <p>4 believe I was asked to call Jim Seery, and the</p> <p>5 other -- and Russell Nelms, and the third</p> <p>6 independent director, I believe his name is</p> <p>7 John. I -- I forget right now what his last</p> <p>8 name is. They were in New York, said they were</p> <p>9 in a conference room. I called in. They were</p> <p>10 very pleasant. They identified who they were,</p> <p>11 and they had a request, and the request was</p> <p>12 that I agree to a transfer -- or that I -- that</p> <p>13 I agree to allow certain assets that were not</p> <p>14 Highland's assets but they were CLO's as- --</p> <p>15 assets -- apparently, there was no dispute</p> <p>16 about that at any point in time, but that I</p> <p>17 agree to allow certain assets that were due CLO</p> <p>18 to be transferred to the registry of the</p> <p>19 bankruptcy court. And either on that call I</p> <p>20 immediately agreed or ended the call, called my</p> <p>21 attorney, and then immediately agreed. It was</p> <p>22 a very -- I accommodated the request quickly.</p> <p>23 Q. Okay. And can you just tell me at</p> <p>24 what point in time you spoke with Mr. Dondero,</p> <p>25 and what did he say that you recall?</p>
<p style="text-align: right;">Page 36</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. I don't know when he became aware of</p> <p>3 that decision. I'm not sure I ever volunteered</p> <p>4 that the decision was even made, but at some</p> <p>5 point, it became an issue because he found out</p> <p>6 through -- if I understand the sequence of</p> <p>7 events correctly, he found out possibly through</p> <p>8 his counsel because there was ultimately</p> <p>9 litigation about that issue. It became known</p> <p>10 to everyone at some point what I had done, I --</p> <p>11 I think. And subsequent to that, it became an</p> <p>12 issue because of CLO HoldCo having fairly</p> <p>13 significant cash flow issues with respect to</p> <p>14 its expenses and obligations, including payment</p> <p>15 of management fees as well as some of the</p> <p>16 scheduled charitable giving that was -- that</p> <p>17 was by contract already predefined. My</p> <p>18 decision to tuck that money -- or to agree</p> <p>19 to -- my agreement to let that money be tucked</p> <p>20 away created some -- created some -- created</p> <p>21 some problems --</p> <p>22 Q. And -- and --</p> <p>23 A. -- for CLO HoldCo.</p> <p>24 Q. Okay. And I just want you to focus</p> <p>25 specifically on my question, and that is, what</p>	<p style="text-align: right;">Page 37</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 did Mr. Dondero say to you that -- that causes</p> <p>3 you to testify as you did, that this is one</p> <p>4 issue that he didn't agree with?</p> <p>5 A. I believe his concern was that</p> <p>6 because it was money that was undisputably to</p> <p>7 flow to CLO HoldCo that -- which had many, many</p> <p>8 other nonliquid assets -- this was a form of a</p> <p>9 liquid asset. It was cash in effect, proceeds.</p> <p>10 -- that the money should have been allowed to</p> <p>11 flow to be available for obligations. He</p> <p>12 didn't under- -- I -- I -- I don't know what he</p> <p>13 was thinking, but the -- the issue was that the</p> <p>14 decision to put it into escrow was -- was --</p> <p>15 was in- -- incorrect, that there was no basis</p> <p>16 for it.</p> <p>17 Q. That -- that's an issue where after</p> <p>18 learning of your decision, he didn't agree with</p> <p>19 it; is that fair?</p> <p>20 A. That's right.</p> <p>21 Q. Okay. Can you think of any decision</p> <p>22 that you've ever made on behalf of CLO HoldCo</p> <p>23 Limited where Mr. Dondero had advance knowledge</p> <p>24 of what you were going to do and he objected to</p> <p>25 it, but you nevertheless overruled his</p>

<p style="text-align: right;">Page 38</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 objection and went ahead and did what -- did</p> <p>3 what you thought was right?</p> <p>4 A. Okay. Let me -- let me -- I have --</p> <p>5 I'm sorry.</p> <p>6 Q. We're here.</p> <p>7 A. Oh, I'm sorry. I'm having some</p> <p>8 issues with my screen. So that may have</p> <p>9 occurred with respect to the original proof of</p> <p>10 claim. Then there was a subsequent amendment</p> <p>11 to the proof of claim, and I -- I believe it --</p> <p>12 I believe that he might have been aware of both</p> <p>13 of those and was in disagreement with -- with</p> <p>14 those. But after working with my attorney, we</p> <p>15 just -- you know, we did what we thought was</p> <p>16 right, and I still think what we did was right.</p> <p>17 There was an issue with respect to Har- --</p> <p>18 HarbourVest that occurred relatively recently</p> <p>19 where he objected to a decision that I had</p> <p>20 made. As I understand it, I could have</p> <p>21 contacted my attorney and changed the decision,</p> <p>22 but I didn't, and I still think that was the</p> <p>23 right decision.</p> <p>24 We have filed plan objections. I</p> <p>25 can't say if he has any -- in that regard, I --</p>	<p style="text-align: right;">Page 39</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 I -- I don't know what his thoughts are on</p> <p>3 objections. They would not have been</p> <p>4 communicated with -- by me to him, but my</p> <p>5 attorney might have consulted with his</p> <p>6 attorney, and there -- they may know what that</p> <p>7 difference is, but I -- that was just another</p> <p>8 big decision. I -- I -- maybe that --</p> <p>9 Q. All right. Let me see if I can --</p> <p>10 let me see if I can summarize this. So two</p> <p>11 proofs of claim. Is it fair to say that</p> <p>12 Mr. Dondero saw those proofs of claim before</p> <p>13 they were filed?</p> <p>14 MR. CLARK: Objection, form.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Withdrawn.</p> <p>17 A. It --</p> <p>18 Q. Do -- do you know whether</p> <p>19 Mr. Dondero saw the proofs of claim before they</p> <p>20 were filed?</p> <p>21 A. I don't believe he did.</p> <p>22 Q. What -- what steps in filing the</p> <p>23 proofs of claim did he object to that you</p> <p>24 overruled? Did he think there was -- something</p> <p>25 should be different about them?</p>
<p style="text-align: right;">Page 40</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. So we had to interface with Highland</p> <p>3 employees at some point to get information to</p> <p>4 support our proof of claim, and my guess, and</p> <p>5 it's just a guess, is that he was aware of</p> <p>6 those inquiries. I -- I'm sorry. I shouldn't</p> <p>7 speculate. I don't know. But he -- with</p> <p>8 respect to the original proof of claim, I'm --</p> <p>9 I'm not aware of what specifically he was</p> <p>10 objecting to or was -- thought should have been</p> <p>11 different, but the -- with respect to the</p> <p>12 amended proof of claim, which reduced the</p> <p>13 original proof of claim to zero, I think that's</p> <p>14 where he had a -- an issue.</p> <p>15 Q. And did you speak with him about</p> <p>16 that topic prior to the time the amended claim</p> <p>17 was filed, or did you only speak with him after</p> <p>18 it was filed?</p> <p>19 A. I'm not sure the timing of that.</p> <p>20 Q. And with respect to HarbourVest, did</p> <p>21 he ask you to object to the settlement on</p> <p>22 behalf of CLO HoldCo Limited, and is that</p> <p>23 something that you declined to do?</p> <p>24 MR. CLARK: Objection, form.</p> <p>25 A. I'm -- I'm sorry. I was confused</p>	<p style="text-align: right;">Page 41</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 with the word. Could you please repeat that?</p> <p>3 Q. Yes. You mentioned HarbourVest</p> <p>4 before, right?</p> <p>5 A. Yes.</p> <p>6 Q. And you mentioned that there was an</p> <p>7 issue with Mr. Dondero and you concerning</p> <p>8 HarbourVest; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And did that have to do with whether</p> <p>11 or not CLO HoldCo Limited would -- would object</p> <p>12 to the debtor's motion to get the HarbourVest</p> <p>13 settlement approved?</p> <p>14 A. Would -- would get the</p> <p>15 HarbourVest --</p> <p>16 Q. Settlement approved by the court.</p> <p>17 A. I'm not trying to be difficult.</p> <p>18 I'm -- I'm -- could you just repeat that one</p> <p>19 more time? I'm --</p> <p>20 Q. What was -- what was --</p> <p>21 A. There was --</p> <p>22 Q. Let me try again.</p> <p>23 A. Okay.</p> <p>24 Q. What was the issue with respect to</p> <p>25 HarbourVest that he objected to and -- and you</p>

<p style="text-align: right;">Page 42</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 overrode his objection and did what you thought</p> <p>3 was right anyway?</p> <p>4 A. Okay. Okay. That's -- that's</p> <p>5 easier for me to understand. I'm sorry. So I</p> <p>6 had worked with my attorney or he did the work</p> <p>7 and consulted with -- we consulted, but we had</p> <p>8 filed an objection, motion objecting to the</p> <p>9 settlement, if I understand the terminology and</p> <p>10 nomenclature correctly. Okay. He had -- we</p> <p>11 had come to an agreement that we had a very</p> <p>12 valid argument. That argument was evidenced</p> <p>13 by, I guess it was, our motion that was</p> <p>14 submitted to the court. On the day of the</p> <p>15 hearing to resolve this issue, we pulled our</p> <p>16 request, and that was because I believed it did</p> <p>17 not have a good-faith basis in law to move</p> <p>18 forward on.</p> <p>19 Q. And did you discuss that issue with</p> <p>20 Mr. Dondero before informing the court that CLO</p> <p>21 HoldCo Limited was withdrawing its objection,</p> <p>22 or did he learn about that for the first time</p> <p>23 during the hearing --</p> <p>24 MR. CLARK: Objection, form.</p> <p>25 BY MR. MORRIS:</p>	<p style="text-align: right;">Page 43</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. -- if you know?</p> <p>3 A. I -- I understand that he learned it</p> <p>4 during the hearing. I don't know the -- I -- I</p> <p>5 don't know the -- whether there was any -- I --</p> <p>6 I don't know for certain on the second half of</p> <p>7 your question.</p> <p>8 Q. Let me -- let me try it -- let me</p> <p>9 try it this way: Did you speak with</p> <p>10 Mr. Dondero about your decision to withdraw the</p> <p>11 objection to the HarbourVest settlement prior</p> <p>12 to the time your counsel made the announcement</p> <p>13 in court?</p> <p>14 A. I don't -- I don't believe so. No.</p> <p>15 No. No. I'm sorry. No.</p> <p>16 Q. And did --</p> <p>17 A. Okay. No. Here -- here's where</p> <p>18 I'm -- I can clarify, okay? I'm sorry. I can</p> <p>19 clarify.</p> <p>20 Q. That's all right.</p> <p>21 A. I gave the decision to my</p> <p>22 attorney -- I -- I agreed with the</p> <p>23 recommendation of my attorney, okay? It wasn't</p> <p>24 my --</p> <p>25 Q. Did you have a good --</p>
<p style="text-align: right;">Page 44</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. -- thought, okay?</p> <p>3 THE REPORTER: I didn't --</p> <p>4 A. Okay. So he --</p> <p>5 Q. It was a recommendation.</p> <p>6 A. Yeah. So he -- he called me with a</p> <p>7 recommendation. It was highly urgent. You</p> <p>8 know, I was coming out of the men's room, had</p> <p>9 my phone with me. I got the call.</p> <p>10 MR. CLARK: Hey, Grant, I -- Grant,</p> <p>11 I just want to caution you not to -- to --</p> <p>12 and I don't think counsel is looking for</p> <p>13 this but not to disclose the -- the</p> <p>14 substance of any of your communications</p> <p>15 with counsel, okay?</p> <p>16 THE WITNESS: Thank you.</p> <p>17 A. So --</p> <p>18 THE WITNESS: Thank you. I'm -- I'm</p> <p>19 sorry.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. It's -- it's really a very simple</p> <p>22 question. Do you recall --</p> <p>23 A. He made a recommendation. I -- I --</p> <p>24 I think I can answer your question without</p> <p>25 going off tangent. I'm sorry. So he -- my</p>	<p style="text-align: right;">Page 45</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 attorney made a recommendation. I agreed with</p> <p>3 it. We with- -- I -- I told him to withdraw --</p> <p>4 or I authorized him to withdraw.</p> <p>5 Q. Okay.</p> <p>6 A. Then I received a communication, and</p> <p>7 I -- I guess the most likely scenario is the</p> <p>8 motion had been withdrawn by the time Jim</p> <p>9 Dondero found out.</p> <p>10 Q. And -- and did he write to you, or</p> <p>11 did he call you? Did he send you a text?</p> <p>12 A. He called me.</p> <p>13 Q. What did he say?</p> <p>14 A. He was asking why, and I explained,</p> <p>15 and I said I agreed with the decision and I was</p> <p>16 sticking with the decision.</p> <p>17 Q. Let's just -- let's just move on to</p> <p>18 a new topic, and let's talk about the structure</p> <p>19 of -- of CLO HoldCo. Are you generally</p> <p>20 familiar with the ownership structure of CLO</p> <p>21 HoldCo?</p> <p>22 A. Yeah. I mean, in terms --</p> <p>23 Q. Are -- are you -- are you generally</p> <p>24 familiar with it? It's not a test. I'm just</p> <p>25 asking do you have a general familiarity --</p>

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2 A. With CLO HoldCo or the entities

3 associated with CLO HoldCo?

4 Q. The latter.

5 A. Yes, I believe so.

6 Q. All right. I've prepared what's

7 called a demonstrative exhibit. It's just --

8 A. Yes.

9 Q. -- just -- it's a document that, I

10 think, reflects facts, but I want to ask you

11 about it.

12 MR. MORRIS: La Asia, can we please

13 put up Exhibit 1.

14 (SCOTT EXHIBIT 1, Organizational

15 Structure: CLO HoldCo, Ltd., was marked

16 for identification.)

17 BY MR. MORRIS:

18 Q. Okay. Can you see that, Mr. Scott?

19 A. Yes, I can.

20 Q. Okay. So I think I took the

21 information from resolutions that were attached

22 to the CLO HoldCo proof of claim, and that's

23 why you got that little footnote there at the

24 bottom of the page. But let's start in the

25 lower right-hand corner and see if this chart

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2 particular structure, to the best of your

3 knowledge?

4 A. I -- I didn't -- I'm sorry. I

5 didn't hear you very well.

6 Q. To the best of your knowledge, did

7 Mr. Dondero make the decisions to establish the

8 structure that's reflected on this page?

9 A. Oh, I don't know if he made the

10 decision to establish this structure, although

11 it's -- it's -- I'm sorry. Strike that. I --

12 if -- if what you're saying is did he approve

13 of this structure, to my knowledge, yes.

14 Q. Okay. Do you hold any position with

15 respect to Charitable DAF Fund, L.P.?

16 A. I -- I -- your chart says no. I --

17 I -- I thought I had a role there, too.

18 Q. I don't know. I don't have

19 information on that. That's why I'm asking the

20 question.

21 A. I -- I -- I believe -- yes, I

22 believe I have the same role as I do in -- in

23 CLO HoldCo.

24 Q. And that would be director?

25 A. Yes.

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2 comports with your understanding of the facts.

3 Do you know that CLO HoldCo Limited

4 was formed in the Cayman Islands?

5 A. Yes.

6 Q. And to the best of your knowledge,

7 is CLO HoldCo Limited 100 percent owned by the

8 Charitable DAF Fund, L.P.? If you're not sure,

9 just say you're not sure if you don't know.

10 It's not a test.

11 A. So the -- the -- the familiarity

12 I -- I'm -- I'm familiar with the different --

13 I'm confused with the arrangement of the boxes

14 and the ownership interest versus managerial

15 interest. I believe that's -- that's right.

16 Q. Okay. And -- and you're the sole

17 director of CLO HoldCo Limited, right?

18 A. Yes.

19 Q. And this whole structure was -- the

20 idea for this structure, to the best of your

21 knowledge, was to implement Mr. Dondero's plan

22 for charitable giving; is that fair?

23 A. Yes. Ultimately, yes.

24 Q. And is it fair to say then that

25 he -- he made the decision to establish this

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2 Q. And to the best of your knowledge,

3 is the Charitable DAF GP, LLC, the general

4 partner of Charitable DAF Fund, L.P.?

5 A. Yes.

6 Q. And is it your understanding that

7 you are the managing member of Charitable DAF

8 GP, LLC?

9 A. Yes.

10 Q. Does Charitable DAF GP, LLC, have

11 any employees?

12 A. No.

13 Q. Does Charitable DAF GP, LLC, have

14 any officers or directors?

15 A. No.

16 Q. Are you the only person affiliated

17 with Charitable DAF GP, LLC, to the best of

18 your --

19 A. I believe so.

20 Q. Do you receive any compensation for

21 serving as the managing member of Charitable

22 DAF GP, LLC?

23 A. No. The -- I don't interact with it

24 very often. It's -- no, I don't receive any

25 compensation.

<p style="text-align: right;">Page 50</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. Can you tell me in your capacity as</p> <p>3 the managing member of Charitable DAF GP, LLC,</p> <p>4 what's the nature of that entity's business?</p> <p>5 A. It -- it doesn't perform any</p> <p>6 day-to-day operations. My understanding is --</p> <p>7 is that it's -- it's there for purposes of</p> <p>8 compliance. I can't recall the last time I had</p> <p>9 any activity with respect to that.</p> <p>10 Q. How about the Charitable DAF Fund,</p> <p>11 L.P.? I apologize if I've asked you these</p> <p>12 questions.</p> <p>13 A. It -- it's the same. I -- I -- my</p> <p>14 activity is almost exclusively CLO HoldCo.</p> <p>15 Q. All right. Let me just ask the</p> <p>16 questions nevertheless. Does Charitable DAF</p> <p>17 Fund, L.P., have any employees?</p> <p>18 A. Employees? No.</p> <p>19 Q. Does it have any officers and</p> <p>20 directors?</p> <p>21 A. No.</p> <p>22 Q. Are you the sole director of</p> <p>23 Charitable DAF Fund, L.P.?</p> <p>24 A. Yes, I believe so.</p> <p>25 Q. So if we -- if we put under</p>	<p style="text-align: right;">Page 51</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Charitable DAF Fund, L.P., Grant Scott,</p> <p>3 director, and we put under CLO HoldCo Limited</p> <p>4 Grant Scott, director, would everything on the</p> <p>5 right side of that page be accurate, to the</p> <p>6 best of your --</p> <p>7 A. I believe so.</p> <p>8 Q. Well, let's move to the left side of</p> <p>9 the page. Have you heard of the entity</p> <p>10 Charitable DAF HoldCo Limited?</p> <p>11 A. Yes.</p> <p>12 Q. Are you the sole director of</p> <p>13 Charitable DAF HoldCo Limited?</p> <p>14 A. Yes.</p> <p>15 Q. How did you become -- how did you</p> <p>16 come to be the char- -- the sole director of</p> <p>17 Charitable DAF HoldCo Limited?</p> <p>18 A. That was when it was established.</p> <p>19 Q. And did Mr. Dondero ask you to serve</p> <p>20 in that capacity?</p> <p>21 A. Yes.</p> <p>22 Q. And did Mr. Dondero ask you to serve</p> <p>23 as the managing member of Charitable DA- -- DAF</p> <p>24 GP, LLC?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 52</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. And did Mr. Dondero ask you to serve</p> <p>3 as the director of Charitable DAF, L.P. --</p> <p>4 withdrawn.</p> <p>5 Did Mr. Dondero ask you to serve as</p> <p>6 director of Charitable DAF Fund, L.P.?</p> <p>7 A. Yes.</p> <p>8 Q. To the best of your knowledge, does</p> <p>9 Charitable DAF HoldCo Limited own 99 percent of</p> <p>10 the limited partnership interests in Charitable</p> <p>11 DAF Fund, L.P.?</p> <p>12 A. Yes. The -- the feed -- the -- the</p> <p>13 feeds -- the -- the three horizontal blocks</p> <p>14 there that identify Highland Dallas Foundation,</p> <p>15 Kansas City, Santa Barbara -- there's a fourth</p> <p>16 of -- relatively de minimus in terms of</p> <p>17 participation. There's a fourth entity that's</p> <p>18 missing. It's Dallas -- I forget the name.</p> <p>19 That -- that -- that structure is -- is a bit</p> <p>20 dated --</p> <p>21 Q. Okay.</p> <p>22 A. -- as it -- as is shown.</p> <p>23 Q. Okay. So I will tell you and we can</p> <p>24 look the documents if you want, but attached to</p> <p>25 CLO HoldCo Limited's claim are a number of</p>	<p style="text-align: right;">Page 53</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 resolutions, and there's one that I have in</p> <p>3 mind that shows Charitable DAF HoldCo Limited</p> <p>4 holding 99 percent of the limited partnership</p> <p>5 interests of Charitable DAF Fund, L.P., and</p> <p>6 there's another that shows it being a hundred</p> <p>7 percent. Do you -- do you know which is</p> <p>8 accurate at least at this time?</p> <p>9 A. There's a 1 percent/99 percent</p> <p>10 division, and I am -- I believe it's the 99</p> <p>11 percent, but I'm -- I'm getting confused by</p> <p>12 the -- by the arrangement. I'm so used to</p> <p>13 another arrangement. I -- I believe the 99</p> <p>14 percent is correct.</p> <p>15 Q. Okay. Do you have any understanding</p> <p>16 as to who owns the other 1 percent of the</p> <p>17 limited partnership interests of Charitable DAF</p> <p>18 Fund, L.P.?</p> <p>19 A. No. This -- this is confusing to</p> <p>20 me. No.</p> <p>21 Q. Okay. There are, at least on this</p> <p>22 page, three foundations that I think you've</p> <p>23 identified. Are those three foundations</p> <p>24 together with the fourth that you mentioned the</p> <p>25 owners of the Charitable DAF HoldCo Limited?</p>

<p style="text-align: right;">Page 54</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. Owners?</p> <p>3 Q. Yes.</p> <p>4 MR. CLARK: Objection, form.</p> <p>5 A. They -- they only participate in the</p> <p>6 money that flows up to them.</p> <p>7 Q. And what does that mean exactly?</p> <p>8 A. What's that?</p> <p>9 Q. What does that -- what do you mean</p> <p>10 by that? Do the foundations fund Charitable</p> <p>11 DAF Fund HoldCo Limited?</p> <p>12 A. Initially. Initially, as I</p> <p>13 understand it, the money flows downward into</p> <p>14 the Charitable DAF HoldCo Limited before it</p> <p>15 ultimately makes its way to CLO HoldCo, and</p> <p>16 then each of those three entities, the various</p> <p>17 foundations, obtain participation interest in</p> <p>18 the money that flows back to them.</p> <p>19 Q. And -- and is that par- -- are those</p> <p>20 participation interests in Charitable -- you</p> <p>21 know what, let -- let me just pull up one</p> <p>22 document and see if that helps.</p> <p>23 MR. MORRIS: Can we put up -- I</p> <p>24 think it's Exhibit Number 5.</p> <p>25 (SCOTT EXHIBIT 2, Unanimous Written</p>	<p style="text-align: right;">Page 55</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Consent of Directors In Lieu of Meeting,</p> <p>3 was marked for identification.)</p> <p>4 MR. MORRIS: I apologize. Let's go</p> <p>5 to --</p> <p>6 MS. CANTY: I'm sorry, John. I</p> <p>7 can't hear you. Was that not the exhibit?</p> <p>8 MR. MORRIS: 4.</p> <p>9 MS. CANTY: Okay.</p> <p>10 THE REPORTER: And Mr. Morris, you</p> <p>11 are -- Mr. Morris, you are breaking up just</p> <p>12 a little bit at the end of your questions.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. Do you see the document on</p> <p>15 the screen, sir?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Okay. And so this is a unanimous</p> <p>18 written consent of the directors of the</p> <p>19 Highland Dallas Foundation. That's one of the</p> <p>20 entities that was on the chart.</p> <p>21 MR. MORRIS: Can we scroll down to</p> <p>22 the -- the bottom of the document where the</p> <p>23 signature lines are. Right there.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Are you a director of the Highland</p>
<p style="text-align: right;">Page 56</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Dallas Foundation?</p> <p>3 A. Yes, selected by them.</p> <p>4 Q. Selected by whom?</p> <p>5 A. By that foundation.</p> <p>6 Q. Are you -- are you a director of all</p> <p>7 of the four foundations that feed into the</p> <p>8 Charitable DAF HoldCo Limited entities that --</p> <p>9 A. No.</p> <p>10 Q. Which of the four foundations are</p> <p>11 you a director of?</p> <p>12 A. This and the Santa Barbara -- I'm</p> <p>13 sorry, Santa Barbara and Kansas City.</p> <p>14 Q. So is -- there's one that you're not</p> <p>15 a director of; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. And which one is that?</p> <p>18 A. The -- could you go back to the --</p> <p>19 Q. Yeah.</p> <p>20 MR. MORRIS: Go back to the</p> <p>21 demonstrative.</p> <p>22 A. It's the Highland Dallas Foundation</p> <p>23 and Santa Barbara Foundation.</p> <p>24 Q. Those are the two that you're a</p> <p>25 director of?</p>	<p style="text-align: right;">Page 57</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. Yes.</p> <p>3 Q. To the best of your knowledge, does</p> <p>4 Mr. Dondero serve as the president for each of</p> <p>5 the foundations that we're talking about?</p> <p>6 A. Yes.</p> <p>7 Q. To the best of your knowledge, is</p> <p>8 Mr. Dondero a director of each of the</p> <p>9 foundations that we're talking about?</p> <p>10 A. Say that again. I'm sorry.</p> <p>11 Q. Is he also a director of each of the</p> <p>12 foundations?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know whether any of the</p> <p>15 foundations has any employees?</p> <p>16 A. I believe they do, but I -- I -- I</p> <p>17 can't say for certain.</p> <p>18 Q. Does -- withdrawn.</p> <p>19 Do you know if there are any</p> <p>20 officers of any of the four foundations other</p> <p>21 than Mr. Dondero's service as president?</p> <p>22 A. I'm sorry. Say that one more time,</p> <p>23 please.</p> <p>24 Q. Yes. Do you know whether any of the</p> <p>25 four foundations has any officers other than</p>

<p style="text-align: right;">Page 58</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Mr. Dondero's service as president?</p> <p>3 A. No.</p> <p>4 Q. You don't know, or they do not?</p> <p>5 A. I -- I don't believe anyone else</p> <p>6 has. I -- actually, I should say I don't -- I</p> <p>7 don't recall. I -- I don't know. I don't -- I</p> <p>8 don't know.</p> <p>9 Q. As a director of the Dallas and</p> <p>10 Santa Barbara foundations, are you aware of any</p> <p>11 officers serving for either of those</p> <p>12 foundations other than Mr. Dondero?</p> <p>13 A. No.</p> <p>14 Q. Do you know who the beneficial owner</p> <p>15 of the Charitable DAF HoldCo Limited entity is?</p> <p>16 A. The beneficial owner?</p> <p>17 Q. Correct.</p> <p>18 A. The various -- various trusts that</p> <p>19 were used to -- that were the vehicles by which</p> <p>20 the money originally was established within --</p> <p>21 within -- within CLO HoldCo.</p> <p>22 Q. Would that be -- would one of them</p> <p>23 be the Get Good Nonexempt Trust?</p> <p>24 A. Yes.</p> <p>25 Q. And you're a trustee of the Get Good</p>	<p style="text-align: right;">Page 59</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Nonexempt Trust, right?</p> <p>3 A. Yes.</p> <p>4 Q. When did you become a trustee of the</p> <p>5 Get Good Nonexempt Trust?</p> <p>6 A. Many years ago. I -- I don't</p> <p>7 remember.</p> <p>8 Q. Are there any other trustees of the</p> <p>9 Get Good Nonexempt Trust?</p> <p>10 A. No.</p> <p>11 Q. Does the Get Good Nonexempt Trust</p> <p>12 have any officers, directors, or employees?</p> <p>13 A. No.</p> <p>14 MR. CLARK: Objection, form. Sorry.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Withdrawn.</p> <p>17 Do you know whether the Get Good</p> <p>18 Nonexempt Trust has any officers, directors, or</p> <p>19 employees?</p> <p>20 A. It does not.</p> <p>21 Q. And I apologize if I asked this, but</p> <p>22 are you the only trustee of the Get Good</p> <p>23 Nonexempt Trust?</p> <p>24 A. Yes.</p> <p>25 Q. Is the Dugaboy Investment Trust also</p>
<p style="text-align: right;">Page 60</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 one of the trusts that has an interest in</p> <p>3 Charitable DAF HoldCo Limited?</p> <p>4 A. Yes.</p> <p>5 Q. Are you a trustee of the Dugaboy</p> <p>6 Investment Trust?</p> <p>7 A. I am not.</p> <p>8 Q. Do you know who is?</p> <p>9 A. I believe it's his sister.</p> <p>10 Q. And is that -- you're referring to</p> <p>11 Mr. Dondero's sister?</p> <p>12 A. I'm sorry. Yes.</p> <p>13 Q. And what's the basis for your</p> <p>14 understanding that Mr. Dondero's siv- -- sister</p> <p>15 serves as the trustee of the Dugaboy Investment</p> <p>16 Trust?</p> <p>17 A. Many years ago there was a -- there</p> <p>18 was a clerical error that identified me as the</p> <p>19 trustee of the Dugaboy. That error was present</p> <p>20 for approximately two weeks or a week and a</p> <p>21 half before it was detected and corrected, and</p> <p>22 so I know from that correction that it's Nancy</p> <p>23 Dondero.</p> <p>24 Q. Are there any other trusts that have</p> <p>25 an interest in Charitable DAF HoldCo Limited</p>	<p style="text-align: right;">Page 61</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 besides those trusts, to the best of your</p> <p>3 knowledge?</p> <p>4 A. No.</p> <p>5 Q. Is it your understanding based on</p> <p>6 what we've just talked about that the Get Good</p> <p>7 Nonexempt Trust and the Dugaboy Investment</p> <p>8 Trust are the indirect beneficiaries of CLO</p> <p>9 HoldCo Limited?</p> <p>10 A. Yes.</p> <p>11 Q. Can you tell me who the</p> <p>12 beneficiaries are of the Get Good trust?</p> <p>13 A. I mean, Jim Dondero.</p> <p>14 Q. And -- and what is that -- is that</p> <p>15 based on the trust agreement -- your knowledge</p> <p>16 of the trust agreement?</p> <p>17 A. Yes.</p> <p>18 Q. Do you have an understanding of who</p> <p>19 the beneficiary is of the Dugaboy Investment</p> <p>20 Trust?</p> <p>21 A. I don't know anything about that</p> <p>22 trust.</p> <p>23 MR. MORRIS: Okay. All right.</p> <p>24 Let's take a short break and reconvene at</p> <p>25 3:30 Eastern Time. We've been going for a</p>

<p style="text-align: right;">Page 62</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 while.</p> <p>3 MR. CLARK: Thank you.</p> <p>4 MR. MORRIS: Okay. Thank you.</p> <p>5 (Whereupon, there was a recess in</p> <p>6 the proceedings from 3:20 p.m. to</p> <p>7 3:31 p.m.)</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Mr. Scott, earlier I think you</p> <p>10 testified that you interfaced with the folks at</p> <p>11 Highland in connection with your duties as the</p> <p>12 director of CLO HoldCo Limited, right?</p> <p>13 A. Yes.</p> <p>14 Q. Are you aware of any written</p> <p>15 agreement between Highland Capital Management</p> <p>16 and CLO HoldCo Limited?</p> <p>17 A. Yes, the various servicer</p> <p>18 agreements.</p> <p>19 Q. Okay. Are you aware that</p> <p>20 Mr. Dondero resigned from his position at</p> <p>21 Highland Capital Management sometime in</p> <p>22 October?</p> <p>23 A. No.</p> <p>24 Q. Have you communicated with anybody</p> <p>25 at Highland Capital Management about the</p>	<p style="text-align: right;">Page 63</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 affairs of CLO HoldCo Limited at any time since</p> <p>3 October?</p> <p>4 A. Yes.</p> <p>5 Q. Anybody other than Jim Seery?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Let's start with Mr. Seery.</p> <p>8 You've spoken with him before, right?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have his phone number?</p> <p>11 A. Yes.</p> <p>12 Q. How many times have you spoken with</p> <p>13 Mr. Seery, to the best of your recollection,</p> <p>14 just generally? It's not a test.</p> <p>15 A. Three, maybe four times.</p> <p>16 Q. Okay. Can you identify by name</p> <p>17 anybody else at Highland that you've spoken</p> <p>18 with since -- in the last two or three months?</p> <p>19 A. I spoke to Jim Dondero. I've spoken</p> <p>20 with Mike Throckmorton. The usual suspects, so</p> <p>21 to speak. Mark Patrick, Mel- -- Melissa</p> <p>22 Schroth.</p> <p>23 Q. Can you recall anybody else?</p> <p>24 A. No. No. Sorry.</p> <p>25 Q. Did you -- did you -- withdrawn.</p>
<p style="text-align: right;">Page 64</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Do you recall the subject matter of</p> <p>3 your discussions with Mr. Throckmorton?</p> <p>4 MR. CLARK: Objection, form.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Withdrawn.</p> <p>7 Do you recall your -- the subject</p> <p>8 matter of your communications with</p> <p>9 Mr. Throckmorton?</p> <p>10 MR. CLARK: Objection, form.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. You can answer.</p> <p>13 A. I -- I regularly interface with</p> <p>14 Mr. Throckmorton regarding approvals of</p> <p>15 expenses, and he's my sort of -- he's my point</p> <p>16 person for approving wire transfers and things</p> <p>17 of that nature.</p> <p>18 Q. How about Mr. Patrick, what -- what</p> <p>19 area of responsibility does he have with</p> <p>20 respect to CLO HoldCo Limited?</p> <p>21 A. He -- he doesn't, to my knowledge.</p> <p>22 Q. Do you recall the nature of the</p> <p>23 substance of any communications that you've had</p> <p>24 with Mr. Patrick since -- you know, the last</p> <p>25 two or three months?</p>	<p style="text-align: right;">Page 65</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. Yes. Or -- yes.</p> <p>3 Q. And what -- what are the nature of</p> <p>4 those conversations or the substance?</p> <p>5 A. He was -- he was one of the</p> <p>6 individuals that helped to establish the</p> <p>7 hierarchy for the -- what I keep referring to</p> <p>8 as the charitable foundation.</p> <p>9 Q. And -- and do you recall why you</p> <p>10 spoke to him in the last -- or -- withdrawn.</p> <p>11 Do you recall the nature of your</p> <p>12 communications in the last two or three months</p> <p>13 with Mr. Patrick?</p> <p>14 A. I --</p> <p>15 MR. CLARK: And hold on, Grant. I'm</p> <p>16 going to caution -- my understanding -- I</p> <p>17 believe Mr. Patrick's an attorney, and so</p> <p>18 I'm going to caution you that you shouldn't</p> <p>19 disclose the substance of -- of those</p> <p>20 communications based on the attorney-client</p> <p>21 privilege.</p> <p>22 MR. MORRIS: Well, I'm -- I -- I am</p> <p>23 the lawyer for the company so -- I guess</p> <p>24 there are other people on the phone and I</p> <p>25 appreciate that, but let's see if we can --</p>

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2 I don't mean to be contentious here, so it

3 wouldn't -- I -- I'd be part of the

4 privilege anyway.

5 BY MR. MORRIS:

6 Q. But in any event, can you tell me

7 generally -- I'm just looking for general

8 subject matter of your conversations with

9 Mr. Patrick.

10 A. I asked him how I would go about

11 re- -- resigning my position.

12 Q. And when did that conversation take

13 place?

14 A. Within the last two weeks.

15 Q. Have you made a decision to resign?

16 A. No.

17 Q. I think you mentioned Melissa

18 Schroth. Do I have that right?

19 A. Yes.

20 Q. Can you describe generally the

21 communications you had with Ms. Schroth in the

22 last few months.

23 A. They -- she has e-mailed me certain

24 documents that I needed to sign. I had a

25 conversation with her about -- about some

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2 A. No.

3 Q. In your discussions with Mr. Seery,

4 did you ever tell him that you thought Highland

5 Capital Management was in default under any

6 agreement in relation to the CLOs?

7 A. No.

8 Q. I want to focus in particular on the

9 shared services agreement. In -- in your

10 discussions with Mr. Seery, did you ever tell

11 him that you believed that Highland Capital

12 Management was in default or in breach of its

13 shared services agreement with CLO HoldCo

14 Limited?

15 A. No.

16 Q. In your communications with

17 Mr. Seery, did you ever indicate any concern on

18 the part of CLO HoldCo Limited with respect to

19 Highland Capital's Man- -- Highland Capital

20 Management's performance under the shared

21 services agreement?

22 A. No.

23 Q. As you sit here today, do you have

24 any reason to believe that Highland Capital

25 Management has done anything wrong in

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2 home -- home improvements, home construction

3 with respect to Jim Dondero's home in Colorado,

4 and that's -- I -- I think that's -- that's it.

5 Q. Okay. Do you recall communicating

6 with anybody at Highland in the last three

7 months other than Mr. Dondero,

8 Mr. Throckmorton, Mr. Patrick, and Ms. Schroth?

9 A. I -- I spoke with Jim Seery this

10 week.

11 Q. Anybody else?

12 A. I don't -- I don't know.

13 Q. Okay.

14 A. I don't think so.

15 Q. In your communications with

16 Mr. Seery, did you two ever discuss his reasons

17 for making any trade on behalf of any CLO?

18 A. No.

19 Q. In your discussions with Mr. Seery,

20 did you ever tell him that you believed that

21 Highland Capital Management had breached any

22 agreement in relation to any CLO?

23 A. Have I had that discussion with Jim

24 Seery?

25 Q. Yes.

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2 connection with its performance as the

3 portfolio manager of the CLOs in which CLO

4 HoldCo Limited has invested?

5 MR. CLARK: Object to form.

6 A. In terms of the -- are you saying --

7 please say that again. I'm sorry.

8 Q. That's okay. I ask long questions

9 sometimes so forgive me, but I'm trying to

10 get -- I'm trying to be precise so that's why

11 it's difficult sometimes. But let me try

12 again.

13 Does CLO HoldCo Limited contend that

14 Highland Capital Management has done anything

15 wrong in the performance of its duties as

16 portfolio manager of the CLOs in which CLO

17 HoldCo has invested?

18 MR. CLARK: Objection, form.

19 A. Yes. It's -- it's outlined in our

20 objections to -- to the plan.

21 Q. Okay. Any -- are you aware of

22 anything that's not contained within CLO Holdco

23 Limited's objection to the plan?

24 MR. CLARK: Objection, form.

25 A. I don't know if this is responsive

<p style="text-align: right;">Page 70</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 to your quest -- request, but two -- two</p> <p>3 issues, I believe, also pose an in- -- a</p> <p>4 problem for CLO HoldCo. One is we are paying</p> <p>5 for services. I think I referred to the</p> <p>6 services as being soup to nuts, but we are not</p> <p>7 getting the full services. We haven't been for</p> <p>8 some time. So we're likely overpaying. There</p> <p>9 was a Highland Select Equity issue, 11-month</p> <p>10 payment that was delayed which I was unaware of</p> <p>11 was due. Normally, I would have interfaced</p> <p>12 with someone at Highland about that, but my</p> <p>13 attorney -- but my -- my attorney had to make a</p> <p>14 request for payment, and that payment was</p> <p>15 ultimately made. I -- other than that, I -- I</p> <p>16 don't -- I don't know. I don't believe so.</p> <p>17 Q. I want to distinguish between the</p> <p>18 shared services agreement between Highland</p> <p>19 Capital Management and CLO HoldCo Limited on</p> <p>20 the one hand and on the other hand the</p> <p>21 management agreements pursuant to which</p> <p>22 Highland Capital Management manages certain</p> <p>23 CLOs that CLO HoldCo invests in.</p> <p>24 You understand the distinction that</p> <p>25 I'm making?</p>	<p style="text-align: right;">Page 71</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. Now I do. I'm sorry. I didn't</p> <p>3 appreciate that.</p> <p>4 Q. Okay. So let's just take each of</p> <p>5 those pieces one at a time. You mentioned your</p> <p>6 concern about services. That's a concern that</p> <p>7 arises under the shared services agreement,</p> <p>8 right?</p> <p>9 A. Yes.</p> <p>10 Q. And you mentioned something about a</p> <p>11 delayed payment having to do with Highland</p> <p>12 Select. Do I have that generally right?</p> <p>13 A. Correct.</p> <p>14 Q. And is that a concern that you have</p> <p>15 that arises under the shared services</p> <p>16 agreement?</p> <p>17 A. It's not the agreement with respect</p> <p>18 to the CLOs as I understand it.</p> <p>19 Q. Okay. So then let's turn to that</p> <p>20 second bucket. You were aware -- you are</p> <p>21 aware, are you not, that Highland Capital</p> <p>22 Management has certain agreements with CLOs</p> <p>23 pursuant to which it manages the assets that</p> <p>24 are owned by the CLOs?</p> <p>25 A. I'm so sorry. Could you please --</p>
<p style="text-align: right;">Page 72</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. I'll try again.</p> <p>3 A. I'm just -- I'm sorry. I was</p> <p>4 distracted and -- and I -- I'm sorry for asking</p> <p>5 you to repeat it again. Please --</p> <p>6 Q. Okay.</p> <p>7 A. Please re- --</p> <p>8 Q. Are you aware that CLO HoldCo</p> <p>9 Limited has made investments in certain CLOs?</p> <p>10 A. Oh, yes, certainly.</p> <p>11 Q. And are you aware that those CLOs</p> <p>12 are managed by Highland Capital Management?</p> <p>13 A. Yes. As the -- as the servicer,</p> <p>14 yes.</p> <p>15 Q. Okay. Have you ever seen any of the</p> <p>16 agreements pursuant to which Highland Capital</p> <p>17 Management acts as a servicer?</p> <p>18 A. I've seen a few, yes.</p> <p>19 Q. Does CLO HoldCo Limited contend that</p> <p>20 it is a party to any agreement between Highland</p> <p>21 Capital Management and the CLOs?</p> <p>22 MR. CLARK: Object to form. And I</p> <p>23 just want to note for the record that</p> <p>24 Mr. Scott is here testifying in his</p> <p>25 individual capacity, I believe, not as a</p>	<p style="text-align: right;">Page 73</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 corporate representative.</p> <p>3 MR. MORRIS: Fair enough. But he is</p> <p>4 the only representative so...</p> <p>5 MR. CLARK: Fair enough. I just</p> <p>6 want that made -- stated for the record,</p> <p>7 but I also object as to form.</p> <p>8 MR. MORRIS: Got it.</p> <p>9 A. It's a third-party beneficiary under</p> <p>10 the agreements.</p> <p>11 Q. And is that because of something you</p> <p>12 read in the document, or is that just your</p> <p>13 belief and understanding?</p> <p>14 A. My belief and understanding.</p> <p>15 Q. And is that belief and understanding</p> <p>16 based on anything other than conversations with</p> <p>17 counsel?</p> <p>18 A. In -- in -- recently it has, but I</p> <p>19 don't recall from previous interactions over</p> <p>20 the years how we discussed that or how I came</p> <p>21 to -- to understand that.</p> <p>22 Q. Does HCLO [sic] HoldCo -- did -- in</p> <p>23 your capacity as the sole director of HCLO</p> <p>24 HoldCo Limited, are you aware of anything that</p> <p>25 Highland Capital Management has done wrong in</p>

<p style="text-align: right;">Page 74</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 connection with the services provided under the</p> <p>3 CLO management agreements?</p> <p>4 MR. CLARK: Objection, form.</p> <p>5 A. I -- I don't -- I don't -- I</p> <p>6 don't -- your answer's no.</p> <p>7 Q. In your capacity as the director of</p> <p>8 CLO HoldCo Limited, are you aware of any</p> <p>9 default or breach under the CLO management</p> <p>10 agreements that -- that Highland Capital</p> <p>11 Management has caused?</p> <p>12 MR. CLARK: Objection, form.</p> <p>13 A. We have raised the issue about</p> <p>14 ongoing sales in various -- I'm not sure</p> <p>15 whether they represent a technical breach,</p> <p>16 though.</p> <p>17 Q. Okay. Are you aware of any</p> <p>18 technical breach?</p> <p>19 MR. CLARK: Objection, form.</p> <p>20 A. No.</p> <p>21 Q. I'm sorry. You said, no, sir?</p> <p>22 A. My answer's no.</p> <p>23 Q. Thank you. Do you know who made the</p> <p>24 decision to cause the CLO HoldCo Limited entity</p> <p>25 to invest in the CLOs that are managed by</p>	<p style="text-align: right;">Page 75</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Highland Capital?</p> <p>3 A. The select -- ultimately, I had to.</p> <p>4 Q. I thought you testified earlier that</p> <p>5 you didn't make decisions as to investment. Do</p> <p>6 I have that wrong?</p> <p>7 A. The selection.</p> <p>8 Q. Okay.</p> <p>9 A. I -- I'm --</p> <p>10 Q. So -- so explain to me --</p> <p>11 A. I have to approve -- I have to</p> <p>12 approve the selection. I'm sorry. But the</p> <p>13 people making -- I was putting that in the camp</p> <p>14 of the people that make the selection.</p> <p>15 Q. Okay. Do you know if -- do you know</p> <p>16 if there are CLOs in the world that exist that</p> <p>17 aren't managed by Highland Capital Management?</p> <p>18 MR. CLARK: Objection, form.</p> <p>19 A. Are there CLOs in the -- in the</p> <p>20 world that are not --</p> <p>21 Q. Yes.</p> <p>22 A. Yes. It's -- it's a well-known --</p> <p>23 it's a well-known --</p> <p>24 Q. In your capacity as the director of</p> <p>25 CLO HoldCo Limited, did you ever consider</p>
<p style="text-align: right;">Page 76</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 making an investment in a CLO that wasn't</p> <p>3 managed by Highland?</p> <p>4 A. No.</p> <p>5 Q. Is there any particular reason why</p> <p>6 you haven't given that any consideration?</p> <p>7 A. That hasn't been my role. That's</p> <p>8 not my expertise. That's been something</p> <p>9 Highland has done and, quite frankly, over the</p> <p>10 years brilliantly so, no.</p> <p>11 Q. You're aware that HCM, L.P., has</p> <p>12 filed for bankruptcy, right?</p> <p>13 A. Yes.</p> <p>14 Q. When did you learn that Highland had</p> <p>15 filed for bankruptcy?</p> <p>16 A. After the fact sometime in late --</p> <p>17 late 2019.</p> <p>18 Q. Since the bankruptcy filing, have</p> <p>19 you made any attempt to sell CLO HoldCo</p> <p>20 Limited's position in any of the CLOs that are</p> <p>21 managed by Highland?</p> <p>22 A. No.</p> <p>23 Q. So notwithstanding the bankruptcy</p> <p>24 filing, you as the director haven't made any</p> <p>25 attempt to transfer out of the CLOs that are</p>	<p style="text-align: right;">Page 77</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 managed by Highland, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Did you ever give any thought to</p> <p>5 exiting the CLO vehicles that were managed by</p> <p>6 Highland in light of its bankruptcy filing?</p> <p>7 A. No.</p> <p>8 Q. Have you ever discussed with</p> <p>9 Mr. Seery anything having to do with the</p> <p>10 management -- withdrawn.</p> <p>11 Have you ever discussed with</p> <p>12 Mr. Seery any aspect of the debtor's management</p> <p>13 of the CLOs in which CLO HoldCo Limited is</p> <p>14 invested?</p> <p>15 A. No.</p> <p>16 Q. You mentioned earlier a request to</p> <p>17 stop trading. Do I have that right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And are you aware that a</p> <p>20 letter was written purportedly on behalf of CLO</p> <p>21 HoldCo Limited in which a request to stop</p> <p>22 trading was made?</p> <p>23 A. As a cos- -- yeah. Yes.</p> <p>24 Q. Okay. Have you ever seen that</p> <p>25 letter before?</p>

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2 A. Yes.

3 MR. MORRIS: Can we put up on the

4 screen -- I think it's now Exhibit 6. It's

5 Exhibit DDDD.

6 (SCOTT EXHIBIT 3, Letter to James A.

7 Wright, III, et al., from Gregory Demo,

8 December 24, 2020, with Exhibit A

9 Attachment, was marked for identification.)

10 MR. MORRIS: Can we scroll down to,

11 I guess, what's Exhibit A. Ri- -- right

12 there.

13 BY MR. MORRIS:

14 Q. You see this is a letter Dece- --

15 dated December 22nd?

16 A. Yes.

17 Q. In the first paragraph there there's

18 a reference to the entities on whose behalf

19 this letter is being sent.

20 Do you see that?

21 A. Yes.

22 Q. Okay. So this letter was sent on

23 December 22nd. Did you see a copy of it before

24 it was sent?

25 A. A -- a draft -- an earlier draft of

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2 that the entities other than CLO HoldCo Limited

3 that are listed in the first paragraph made a

4 motion in the court asking the court for an

5 order that would have prevented Highland from

6 making any transactions for a limited period of

7 time?

8 A. Yes.

9 Q. Did you know that motion was being

10 made prior to the time that it was made?

11 A. I'm not sure.

12 Q. Did you ever think about whether CLO

13 HoldCo Limited should join that particular

14 motion?

15 A. I believe we were -- my attorney was

16 aware of it. I don't recall our discussion

17 about it. We were aware -- when I say we, I

18 mean collectively -- and did not join it.

19 Q. Okay. Can you tell me why you did

20 not join it.

21 MR. CLARK: And, again, Grant, to --

22 to the extent it's based on communications

23 with counsel, you're free to say that

24 but -- but not to disclose any substance of

25 communications with counsel.

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2 this I did.

3 Q. Okay. Did you provide any comments

4 to it?

5 A. I did.

6 MR. CLARK: Well, hold on. Grant,

7 let me caution you. To the extent you

8 provided comments to counsel, we're going

9 to assert the attorney-client privilege on

10 those comments.

11 MR. MORRIS: It's just a yes-or-no

12 question. I'm not looking for the

13 specifics.

14 MR. CLARK: Thank you.

15 A. Yes.

16 Q. Are you aware that earlier letters

17 were -- withdrawn.

18 Are you aware that prior to December

19 22nd, the entities other than CLO HoldCo

20 Limited that are listed in this pers- -- first

21 paragraph had sent a letter making the same

22 request?

23 A. With respect to a letter, no. No,

24 I -- I did not.

25 Q. Are you aware as you sit here now

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2 A. The subject of this letter on the

3 22nd which yielded the original letter you

4 briefly showed me on the 24th as well as an

5 additional letter on the 28th identified two

6 points as I understand it. The first point is

7 what I believe is the somewhat innocuous

8 request to halt sales, not a demand in any way.

9 And the second more substantive issue has to do

10 with steps to remove Highland or a subsequent

11 derived entity from Highland from the various

12 services agreements that you had previously --

13 we had previously discussed. Neither of those

14 issues met the require- -- neither of those

15 issues led us to believe that a motion such as

16 what you've just mentioned was -- was right --

17 Q. Okay.

18 A. -- because no -- no decision has

19 been made on that.

20 Q. Okay.

21 MR. MORRIS: So I want to go back to

22 my question and move to strike as

23 nonresponsive, and I'll just ask my

24 question again.

25 BY MR. MORRIS:

<p style="text-align: right;">Page 82</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. Why did CLO HoldCo Limited decide</p> <p>3 not to participate in the earlier motion that</p> <p>4 was brought by the other entities that are</p> <p>5 identified in Paragraph 1 that asked the court</p> <p>6 to stop Highland from engaging in trades?</p> <p>7 A. John, I'm so sorry. There was a</p> <p>8 feedback loop that came up when you started to</p> <p>9 re- -- re- -- recite -- restate your question.</p> <p>10 I'm sorry.</p> <p>11 Q. That's okay. Why did CLO HoldCo</p> <p>12 Limited decide not to join in the earlier</p> <p>13 motion where the entities listed in Paragraph 1</p> <p>14 asked the court to order Highland not to make</p> <p>15 any further trades? Why did they not join that</p> <p>16 motion?</p> <p>17 A. The -- the issue didn't rise to</p> <p>18 the -- I don't believe we had formulated a</p> <p>19 legal basis sufficient to justify such steps.</p> <p>20 We hadn't laid the foundation necessary to --</p> <p>21 to do that.</p> <p>22 Q. Are you aware of what the court</p> <p>23 decided?</p> <p>24 A. By virtue of the original letter you</p> <p>25 sent me dated the -- or show -- showed</p>	<p style="text-align: right;">Page 83</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 initially dated the 24th, I have a general</p> <p>3 understanding of what they decided.</p> <p>4 Q. Did you -- did you ever review the</p> <p>5 transcript of the hearing where the other</p> <p>6 parties asked the court to stop Highland from</p> <p>7 engaging in any further trades on the CLOs?</p> <p>8 A. I did not.</p> <p>9 Q. Is there anything different about</p> <p>10 the request in this letter, to the best of your</p> <p>11 knowledge, from the request that was made of</p> <p>12 the court just six days earlier?</p> <p>13 MR. CLARK: Objection, form.</p> <p>14 A. Yes. There's a -- in -- in my -- my</p> <p>15 view there's a substantial difference between</p> <p>16 filing an action converting a request into</p> <p>17 essentially a demand versus a gentle request</p> <p>18 with multiple caveats, that that request is not</p> <p>19 a demand.</p> <p>20 Q. Okay. Let me ask you this: Are you</p> <p>21 aware -- what -- when did you first learn that</p> <p>22 Highland was making trades in its capacity as</p> <p>23 the servicer of the CLOs? When -- when did you</p> <p>24 first learn that Highland was doing that? Ten</p> <p>25 years ago, right? I mean --</p>
<p style="text-align: right;">Page 84</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. Oh. Oh. Oh, I'm -- yeah. Yeah.</p> <p>3 Oh, yes. I'm sorry. Of course.</p> <p>4 Q. Right? I mean, Highland has been</p> <p>5 making trades on behalf of CLOs for years,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. And Highland was making trades on</p> <p>9 behalf of CLOs throughout 2020, to the best of</p> <p>10 your knowledge, right?</p> <p>11 A. Yes.</p> <p>12 Q. And you know when Jim Dondero was</p> <p>13 still with Highland, he was making trades on</p> <p>14 behalf of CLO -- on behalf of the CLOs, right?</p> <p>15 A. Yes.</p> <p>16 Q. And you never objected when Jim</p> <p>17 Dondero was doing it; is that right?</p> <p>18 A. That is correct.</p> <p>19 Q. Okay. So what changed that caused</p> <p>20 you in your capacity as the director of CLO</p> <p>21 HoldCo to request a full stoppage of trading?</p> <p>22 A. It was my understanding that because</p> <p>23 of the bankruptcy and the removal of Jim</p> <p>24 Dondero that the replacement decision-makers</p> <p>25 did not have the expertise where I felt</p>	<p style="text-align: right;">Page 85</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 comfortable with them making those decisions,</p> <p>3 but...</p> <p>4 Q. I thought you testified earlier that</p> <p>5 you weren't aware that Mr. Dondero left</p> <p>6 Highland. Am I mistaken in my recollection?</p> <p>7 A. I think you said in October, and</p> <p>8 I -- as I -- there's some con- -- I have</p> <p>9 confusion about when he left versus when he was</p> <p>10 still there but other -- but he was not making</p> <p>11 those trades.</p> <p>12 Q. Okay. Fair enough. The bankruptcy</p> <p>13 has nothing to do with your desire to stop</p> <p>14 trading, right, because Highland traded for a</p> <p>15 year after the bankruptcy and never took any</p> <p>16 action to try to stop Highland from trading on</p> <p>17 behalf of the CLOs, fair?</p> <p>18 A. The -- Highland as of right now</p> <p>19 isn't the same entity it was -- well, the</p> <p>20 decision-making team -- the -- the financial</p> <p>21 decision-making team for CLO Holdco's is no</p> <p>22 longer the team I have worked with, and upon</p> <p>23 discussion with counsel, we agreed -- I agreed</p> <p>24 to this letter, which I did, to just maintain</p> <p>25 the status quo.</p>

<p style="text-align: right;">Page 86</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. How did you form your opinion that</p> <p>3 the debtor doesn't have the expertise to</p> <p>4 execute trades on behalf of the CLOs today?</p> <p>5 What's the basis for that belief?</p> <p>6 A. I -- as I understood it, the -- the</p> <p>7 people historically making that decision were</p> <p>8 no longer making that decision.</p> <p>9 Q. Who besides Mr. Dondero --</p> <p>10 withdrawn.</p> <p>11 Who are you referring to?</p> <p>12 A. Well, Mr. Dondero is one. I don't</p> <p>13 know the names, but I -- I understood it to</p> <p>14 mean that the group previously responsible, for</p> <p>15 exam- -- for example, Hunter Covitz, including</p> <p>16 Hun- -- him, were no longer involved in the</p> <p>17 decision-making process, but...</p> <p>18 Q. How did you -- how -- how -- who</p> <p>19 gave you the information that led you to</p> <p>20 conclude that Hunter Covitz was no longer</p> <p>21 involved in the decision-making process?</p> <p>22 A. Specifically him and that name being</p> <p>23 mentioned, I -- I -- I wasn't informed of his</p> <p>24 speci- -- him -- him being removed. I was</p> <p>25 under the impression that the team that had</p>	<p style="text-align: right;">Page 87</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 previously been doing that was no longer doing</p> <p>3 it.</p> <p>4 Q. And what gave you that impression?</p> <p>5 A. Was communications I had with my</p> <p>6 attorney.</p> <p>7 Q. Okay. Is there any source for your</p> <p>8 information that led you to conclude that the</p> <p>9 team was no longer there that was able to</p> <p>10 engage in the trades on behalf of the CLOs</p> <p>11 other than your attorneys?</p> <p>12 A. Well, this -- this letter -- I -- I</p> <p>13 think the answer is no.</p> <p>14 Q. Thank you. Do you know if Jim -- do</p> <p>15 you have an opinion or a view as to whether Jim</p> <p>16 Seery is qualified to make trades?</p> <p>17 A. This --</p> <p>18 MR. CLARK: Objection, form.</p> <p>19 A. I don't know -- I spoke to Jim Seery</p> <p>20 earlier this week. You -- you asked me whether</p> <p>21 I had his number. I said I did. That's only</p> <p>22 because he called me. My phone rang with his</p> <p>23 number. It was a number I did not recognize,</p> <p>24 it was not in my contacts, but he left me a</p> <p>25 voice mail so I called him back. Then I</p>
<p style="text-align: right;">Page 88</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 updated my contacts to -- to add his name so</p> <p>3 now I have his name. And during that</p> <p>4 conversation he informed me that he did have</p> <p>5 that expertise --</p> <p>6 Q. And --</p> <p>7 A. -- without me making any inquiry.</p> <p>8 He volunteered that.</p> <p>9 Q. But you hadn't made any inquiry</p> <p>10 prior to the time that you authorized the</p> <p>11 sending of this letter; is that fair?</p> <p>12 A. That's correct.</p> <p>13 Q. Do you know whether Mr. Seery, in</p> <p>14 fact, engaged in transactions on behalf of the</p> <p>15 debtor since he was appointed back in January?</p> <p>16 A. I do not.</p> <p>17 Q. Did you ask that question prior to</p> <p>18 the time you authorized the sending of this</p> <p>19 letter?</p> <p>20 A. I did not.</p> <p>21 Q. Can you identify a single</p> <p>22 transaction that Jim Seery has ever made that</p> <p>23 you disagree with?</p> <p>24 A. No.</p> <p>25 Q. Can you identify any transaction</p>	<p style="text-align: right;">Page 89</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 that the debtor made on behalf of any of the</p> <p>3 CLOs since the time that you understand</p> <p>4 Mr. Dondero left Highland that you disagree</p> <p>5 with?</p> <p>6 A. No.</p> <p>7 Q. Did you have any discussion with any</p> <p>8 representative of any of the entities listed on</p> <p>9 this document where they told you they believe</p> <p>10 Jim Seery didn't have the expertise to engage</p> <p>11 in transactions on behalf of the whole -- of</p> <p>12 the CLOs?</p> <p>13 A. You -- your question -- I'm -- I'm</p> <p>14 sorry. I'm trying to be -- I'm trying to be a</p> <p>15 hundred perc- -- I'm trying to be accurate</p> <p>16 here.</p> <p>17 Q. Let me interrupt you and just say,</p> <p>18 I'm very grateful for your testimony. I know</p> <p>19 this is not easy, and I do believe that you're</p> <p>20 earnestly and honestly trying to answer the</p> <p>21 questions the best you can. So no apologies</p> <p>22 necessary anymore. If you need me to repeat</p> <p>23 the question or rephrase it, just say that,</p> <p>24 okay?</p> <p>25 A. Please -- yes.</p>

<p style="text-align: right;">Page 90</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. Okay.</p> <p>3 A. Please -- please repeat that.</p> <p>4 Q. Did you ever communicate with any</p> <p>5 employee, officer, director, representative of</p> <p>6 any of the entities that are on this page</p> <p>7 concerning the debtor's ability to service the</p> <p>8 CLOs?</p> <p>9 A. I believe so.</p> <p>10 Q. And can you identify the person or</p> <p>11 persons?</p> <p>12 A. I think it's Jim Dondero.</p> <p>13 Q. Anybody else other than Mr. Dondero?</p> <p>14 A. No.</p> <p>15 Q. When did you have that conversation</p> <p>16 or those conversations with Mr. Dondero?</p> <p>17 A. This letter is dated the 22nd --</p> <p>18 Q. Correct.</p> <p>19 A. -- right?</p> <p>20 Q. Yes.</p> <p>21 A. I believe that's the Tuesday before</p> <p>22 Christmas, and this would have been on the</p> <p>23 21st, the Monday.</p> <p>24 Q. What do you recall about your</p> <p>25 conversation on the 21st regarding the</p>	<p style="text-align: right;">Page 91</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 substance of this particular letter?</p> <p>3 A. Jim Dondero described why he</p> <p>4 believed sales being made on an ongoing basis</p> <p>5 after a request was made to stop was im- --</p> <p>6 improper.</p> <p>7 Q. Do you -- do you rely on what</p> <p>8 Mr. Dondero said to you during that phone call</p> <p>9 on December 21st in -- in deciding to join in</p> <p>10 this particular letter?</p> <p>11 A. No.</p> <p>12 Q. Did you only then rely on the</p> <p>13 information you obtained from counsel?</p> <p>14 A. Yes. I -- I -- I -- I considered</p> <p>15 this letter to be nearly the most gentle</p> <p>16 request imaginable amongst lawyers to maintain</p> <p>17 the status quo.</p> <p>18 Q. And the request that's made in this</p> <p>19 letter is perfectly consistent with what</p> <p>20 Mr. Dondero told you on the 21st of December,</p> <p>21 correct?</p> <p>22 A. I don't -- no.</p> <p>23 Q. How --</p> <p>24 MR. MORRIS: Can we go to the end of</p> <p>25 this letter, please. All right. Right</p>
<p style="text-align: right;">Page 92</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 there.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you see the request that's in the</p> <p>5 last sentence?</p> <p>6 A. Yes.</p> <p>7 Q. Is that the same thing that</p> <p>8 Mr. Dondero told you should happen, that --</p> <p>9 that there should be no further CLO</p> <p>10 transactions at least until the issues raised</p> <p>11 and addressed by the debtor's plan were</p> <p>12 resolved substantively?</p> <p>13 A. Yes.</p> <p>14 Q. Is there anything that he said</p> <p>15 that's inconsistent with the request that's</p> <p>16 made here?</p> <p>17 MR. CLARK: Objection, form.</p> <p>18 A. This -- and can you -- can you show</p> <p>19 me earlier parts?</p> <p>20 Q. Of course. You know what, I'll</p> <p>21 withdraw the question.</p> <p>22 And let me see if I can do it this</p> <p>23 way: In your discussion with Mr. Dondero, did</p> <p>24 he indicate that he had seen a draft of this</p> <p>25 letter?</p>	<p style="text-align: right;">Page 93</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. No. And I didn't -- I didn't have a</p> <p>3 discussion with him. I -- I merely listened to</p> <p>4 him. There was no -- I -- I had no input to</p> <p>5 the conversation.</p> <p>6 Q. Okay. I -- I did -- I didn't --</p> <p>7 I -- I appreciate that. So he called you; is</p> <p>8 that right?</p> <p>9 A. We -- we called in.</p> <p>10 Q. Oh, was it --</p> <p>11 A. I --</p> <p>12 Q. Was it --</p> <p>13 A. I don't know --</p> <p>14 Q. Was it --</p> <p>15 A. I don't know the sequence of the</p> <p>16 calls. I'm sorry.</p> <p>17 Q. Was there anybody on the call other</p> <p>18 than you and Mr. Dondero, the call that you're</p> <p>19 describing on December 21st?</p> <p>20 A. Yes, my attorney and an attorney --</p> <p>21 I believe the attorney that signed this letter.</p> <p>22 Q. Okay. And I just want to focus on</p> <p>23 what Mr. Dondero said. Did he -- did he say</p> <p>24 during the call that Highland should not be</p> <p>25 engaging in any further CLO transactions?</p>

<p style="text-align: right;">Page 94</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. He took a more -- if I can</p> <p>3 characterize his mental -- I looked at the</p> <p>4 issue of maintaining the status quo since there</p> <p>5 was somebody that was complaining about it,</p> <p>6 that that -- because it -- it isn't assets of</p> <p>7 Highland, it doesn't adversely affect Highland.</p> <p>8 If -- if stopping the sales -- you know, my --</p> <p>9 my thought was -- is if stopping the sales</p> <p>10 reduces the likelihood of litigation</p> <p>11 disputes -- you already saw that there was the</p> <p>12 one from middle of December. I -- I thought</p> <p>13 that would be the more appropriate way to go.</p> <p>14 I didn't think there'd be any harm.</p> <p>15 Q. And was that your --</p> <p>16 A. I think -- I think Jim Dondero had a</p> <p>17 more legalistic view of its impro- -- im- --</p> <p>18 improper nature.</p> <p>19 Q. And did he share that view with you?</p> <p>20 A. On Monday, yes.</p> <p>21 Q. Can you describe for me your</p> <p>22 recollection of what he said about the</p> <p>23 legalistic view?</p> <p>24 A. Just the mention of -- all I recall</p> <p>25 is in terms of -- the law associated with it</p>	<p style="text-align: right;">Page 95</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 was -- the Advisers Act was mentioned --</p> <p>3 Q. Did you have --</p> <p>4 A. -- but I don't -- I don't know what</p> <p>5 that is. You know, I don't know what that is.</p> <p>6 Q. And you -- and -- and you never --</p> <p>7 it never occurred to you to pick up the phone</p> <p>8 and -- and to speak with Mr. Seery to see why</p> <p>9 it was he thought he should be engaging in</p> <p>10 transactions?</p> <p>11 A. No. And -- but I -- my lack of</p> <p>12 volunteering a phone call to Jim Seery isn't --</p> <p>13 it's -- it's because of -- I -- I thought any</p> <p>14 phone call by me to Jim Seery would be</p> <p>15 inappropriate because he's represented by</p> <p>16 counsel. I mean, we were working on claims</p> <p>17 against him --</p> <p>18 Q. Okay.</p> <p>19 A. -- right, so...</p> <p>20 Q. Did you -- did you -- did you think</p> <p>21 to instruct your lawyers to reach out to</p> <p>22 Mr. Seery to actually speak to him instead of</p> <p>23 just sending a letter like this and to -- and</p> <p>24 to ask -- and to maybe inquire as to why he</p> <p>25 thought it was appropriate to engage in</p>
<p style="text-align: right;">Page 96</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 transactions before they made a request six</p> <p>3 days after the court threw out their suit as</p> <p>4 frivolous? I'll withdraw that. That's too</p> <p>5 much.</p> <p>6 A few days later did you authorize</p> <p>7 the sending of another letter to the debtor in</p> <p>8 which you suggested that the -- the entities on</p> <p>9 behoove -- on -- on whose behalf the letter was</p> <p>10 sent might take steps to terminate the CLO</p> <p>11 management agreements?</p> <p>12 A. I did not see -- so there is a --</p> <p>13 there is a December 28th letter.</p> <p>14 MR. MORRIS: Let's just go to the</p> <p>15 next letter, and -- and let's just call</p> <p>16 that up.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. I think it's -- I think it's</p> <p>19 actually dated December 23rd. It was the next</p> <p>20 day.</p> <p>21 A. Yes.</p> <p>22 (SCOTT EXHIBIT 4, Letter to James A.</p> <p>23 Wright, III, et al., from Gregory Demo,</p> <p>24 December 24, 2020, with Exhibit A</p> <p>25 Attachment, was marked for identification.)</p>	<p style="text-align: right;">Page 97</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. And do you recall that the next day</p> <p>4 CLO HoldCo Limited joined in another letter to</p> <p>5 the debtors? Do you have that recollection?</p> <p>6 A. Yes. Not -- not be- -- yes, I do,</p> <p>7 but -- yes, I do.</p> <p>8 Q. Did you see this letter before it</p> <p>9 was sent?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Did you authorize the sending of</p> <p>12 this letter?</p> <p>13 A. I gave -- I relied on my attorney to</p> <p>14 guide me through this process.</p> <p>15 Q. I appreciate that.</p> <p>16 A. I let him make that call on this</p> <p>17 letter, which is -- copies most of the prior</p> <p>18 letter and then adds another issue.</p> <p>19 Q. Okay. Do you have an understanding</p> <p>20 of what that issue is?</p> <p>21 A. Yes.</p> <p>22 Q. And what is your understanding of</p> <p>23 what that additional issue is?</p> <p>24 A. Somewhere in this letter of the 23rd</p> <p>25 there's an -- there's an -- an inclusion of</p>

<p style="text-align: right;">Page 98</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 a -- a statement of an -- a future intent.</p> <p>3 Q. A future intent to do what?</p> <p>4 A. To remove Highland as the servicer</p> <p>5 of the agreements you talked to me about</p> <p>6 previously.</p> <p>7 Q. Can you tell me whether there's a</p> <p>8 factual basis on which CLO HoldCo Limited</p> <p>9 believes that the debtor should be removed as</p> <p>10 the servicer of the portfolio manager of the</p> <p>11 CLOs?</p> <p>12 A. Yes. There are -- there are</p> <p>13 multiple bases to consider subject to all the</p> <p>14 other conditional language in the request of</p> <p>15 these letters to consider that going forward</p> <p>16 but no decision. That intent is an intent to</p> <p>17 evaluate, not an intent to take any action. I</p> <p>18 haven't authorized any action. I don't feel</p> <p>19 comfortable with my knowledge base at this</p> <p>20 time, but it's something being explored.</p> <p>21 Q. So knowing everything that you know</p> <p>22 as of today, you have not yet formed a decision</p> <p>23 as to whether CLO HoldCo Limited will take any</p> <p>24 steps to terminate Highland's portfolio</p> <p>25 management agreements, correct?</p>	<p style="text-align: right;">Page 99</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 A. I don't -- I don't want to be</p> <p>3 difficult, but I'm -- I'm confused yet again</p> <p>4 with your question. But I have not -- there --</p> <p>5 there are a number of cr- -- a number of issues</p> <p>6 that with my nonfinance background would</p> <p>7 suggest to me that they -- they may be bases</p> <p>8 for -- for cause, to -- to assert a cause. And</p> <p>9 I've been conferring with my attorney about</p> <p>10 that, but it's very preliminary and no -- no</p> <p>11 decision has been made. I -- no decision is</p> <p>12 being made.</p> <p>13 Q. So what -- what are the factors that</p> <p>14 are causing you to consider possibly seeking to</p> <p>15 begin the process of terminating the CLO</p> <p>16 management agreements?</p> <p>17 A. Well, I guess I would break them</p> <p>18 down into maybe two categories, maybe more.</p> <p>19 The one that resonates most with me -- I don't</p> <p>20 know -- maybe because even though I'm a patent</p> <p>21 attorney, I guess at one point I was an</p> <p>22 attorney. But the thing that resonates most</p> <p>23 with me --</p> <p>24 Q. You are an attorney.</p> <p>25 A. -- at the moment -- well, now you</p>
<p style="text-align: right;">Page 100</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 know why I'm a patent attorney and not one of</p> <p>3 you guys. But the thing that resonates with me</p> <p>4 the most from a legal substantive, black letter</p> <p>5 law sort of issue is the plan for</p> <p>6 reorganization, which we've objected to. I've</p> <p>7 re- -- I've reviewed the objection, and that</p> <p>8 sets forth our -- that sets forth my position,</p> <p>9 and I consider that to be quite material. The</p> <p>10 others are issues of practical effects of</p> <p>11 what's happened thus far with the bankruptcy,</p> <p>12 the termination of the experts with a long</p> <p>13 track record of success, the soon-to-be</p> <p>14 termination of all employees, the cancellation</p> <p>15 of various representation agreements, things of</p> <p>16 that nature looked at from an additive sort of</p> <p>17 perspective.</p> <p>18 Q. You know that -- can we refer to the</p> <p>19 counterparties under the CLO management</p> <p>20 agreements as the issuers? Are you familiar</p> <p>21 with that term?</p> <p>22 A. I -- I am familiar with the term</p> <p>23 issuers, yes.</p> <p>24 Q. Okay. And do you understand --</p> <p>25 A. There's an agreement between the --</p>	<p style="text-align: right;">Page 101</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 I'm sorry.</p> <p>3 Q. There's an agreement between the</p> <p>4 issuers and Highland pursuant to which Highland</p> <p>5 manages the CLO assets, right?</p> <p>6 A. With res- -- yes.</p> <p>7 Q. Okay. And do you understand what's</p> <p>8 going to happen to those management contracts</p> <p>9 in connection with the plan of reorganization?</p> <p>10 A. Partially.</p> <p>11 Q. What's your partial understanding?</p> <p>12 A. Well, I -- I wouldn't want to</p> <p>13 characterize it as a partial understanding. I</p> <p>14 mean, with respect to part of the agreement.</p> <p>15 Q. Okay.</p> <p>16 A. Okay. Our plan objection lays out</p> <p>17 our basis for objecting to steps that Highland</p> <p>18 is actively taking to preclude us from the full</p> <p>19 rights that we have as third-party</p> <p>20 beneficiaries under that agreement, and they're</p> <p>21 not de minimus. They're quite material. They</p> <p>22 relate to cause issues and no-cause issues, for</p> <p>23 example, as out- -- as outlined in our --</p> <p>24 our -- our objections.</p> <p>25 Q. Okay. Did you ever make any attempt</p>

<p style="text-align: right;">Page 102</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 to speak with any issuer concerning Highland's</p> <p>3 performance under the CLO management</p> <p>4 agreements?</p> <p>5 A. No.</p> <p>6 Q. Why not?</p> <p>7 A. I -- I don't have any facts --</p> <p>8 understand I -- I get all of the reports</p> <p>9 periodically from Highland -- from Highland.</p> <p>10 I -- I don't have a basis that I'm aware of to</p> <p>11 complain about performance issues. This is a</p> <p>12 legal issue that I'm talking about.</p> <p>13 Q. So you have no basis to suggest that</p> <p>14 Highland hasn't performed under the CLO</p> <p>15 management agreements, correct?</p> <p>16 A. Well, Highland as of right now,</p> <p>17 the -- the issue really is as -- as to what's</p> <p>18 next, not -- not -- I -- I don't -- I don't</p> <p>19 believe I have facts that support a com- --</p> <p>20 a -- an issue right now. It's -- it's --</p> <p>21 it's -- it's going forward that is the problem.</p> <p>22 Q. I --</p> <p>23 A. That's -- you know, that's --</p> <p>24 Q. Have you given any thought to</p> <p>25 speaking with the issuers to try to get their</p>	<p style="text-align: right;">Page 103</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 views as to what they think is going to happen</p> <p>3 in the future?</p> <p>4 A. No.</p> <p>5 Q. They're the -- they're the actual</p> <p>6 direct beneficiaries under the CLO management</p> <p>7 agreements, to the best of your understanding,</p> <p>8 right?</p> <p>9 A. Yes. Their rights may not be</p> <p>10 impacted; it's CLO Holdco's rights that are</p> <p>11 going to be adversely impacted. So it's -- I</p> <p>12 don't know that our view is in alignment with</p> <p>13 their view. But to answer your question, no,</p> <p>14 we did not contact them.</p> <p>15 Q. Do you have any knowledge or</p> <p>16 information as to any assertion by the issuers</p> <p>17 that Highland is in breach of any of the CLO</p> <p>18 management agreements?</p> <p>19 A. No.</p> <p>20 Q. Do you have any knowledge or</p> <p>21 information as to whether or not any of the</p> <p>22 issuers believe that Highland is in default</p> <p>23 under the CLO management agreements?</p> <p>24 A. No, I don't have any of those facts.</p> <p>25 Q. Are you aware that the issuers are</p>
<p style="text-align: right;">Page 104</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 negotiating with Highland to permit Highland to</p> <p>3 assume the CLO management agreements and to</p> <p>4 continue operating under them?</p> <p>5 A. I believe so --</p> <p>6 Q. Is that --</p> <p>7 A. -- but they're --</p> <p>8 Q. Go ahead. I'm sorry.</p> <p>9 A. As I understand it, Highland</p> <p>10 wants -- Highland or its subsidiary -- or</p> <p>11 its -- its -- its postbankruptcy relative --</p> <p>12 post- -- excuse me, that Highland</p> <p>13 postbankruptcy -- or postplan confirmation</p> <p>14 wants to move forward, substitute itself for</p> <p>15 the prior issuer -- no, sorry, substitute</p> <p>16 itself for the prior servicer under those</p> <p>17 agreements to assume those agreements but in</p> <p>18 the process of assuming those agreements,</p> <p>19 carving out a bunch of provisions that from a</p> <p>20 legal standpoint and a potentially future</p> <p>21 practical and monetary standpoint are quite</p> <p>22 substantial, and that has to relate to the</p> <p>23 removal rights based on cause and without</p> <p>24 cause. As I understand it, that's all set</p> <p>25 forth in our plan objection.</p>	<p style="text-align: right;">Page 105</p> <p>1 GRANT SCOTT - 1/21/2021</p> <p>2 Q. Okay. Are you aware of a third</p> <p>3 letter that was sent to Highland on behalf of</p> <p>4 CLO HoldCo and the other entities that are</p> <p>5 listed in this document?</p> <p>6 A. The December 28th letter, is that</p> <p>7 what you mean?</p> <p>8 Q. It's actually December 31st, if I</p> <p>9 can refresh your recollection.</p> <p>10 MR. MORRIS: Can we put up Exhibit</p> <p>11 F?</p> <p>12 (SCOTT EXHIBIT 5, Letter to Jeffrey</p> <p>13 N. Pomerantz from R. Charles Miller,</p> <p>14 December 31, 2020, was marked for</p> <p>15 identification.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. You remember that there was a letter</p> <p>18 dated on or about December 31st that was</p> <p>19 sent -- oh, actually, you know, I apologize.</p> <p>20 If we scroll down to the -- to the next -- to</p> <p>21 the first box, there actually is no mention of</p> <p>22 CLO HoldCo.</p> <p>23 Are you aware that Mr. Dondero was</p> <p>24 evicted from Highland's offices as of the end</p> <p>25 of the year?</p>

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2 A. I -- I didn't know the time, but I

3 understand he's no longer there.

4 Q. Does CLO HoldCo Limited contend that

5 it was damaged in any way by Mr. Dondero's

6 eviction from the Highland suite of offices?

7 MR. CLARK: Objection, form.

8 A. I -- I don't have any information to

9 support that as of this time.

10 Q. It's not -- it's not a belief that

11 you hold today?

12 A. I don't have a belief of that, yes.

13 MR. MORRIS: All right. Let's take

14 a short break. I may be done. I -- I'm

15 grateful, Mr. Scott, and don't want to

16 abuse your time. Give me -- let -- just

17 let -- let's come back at 4:50, just eight

18 minutes, and if I have anything further, it

19 will be brief.

20 (Whereupon, there was a recess in

21 the proceedings from 4:42 p.m. to

22 4:49 p.m.)

23 MR. MORRIS: Okay. Mr. Scott, thank

24 you very much for your time. I have no

25 further questions.

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2 C E R T I F I C A T E

3 STATE OF NORTH CAROLINA)

4) ss.:

5 COUNTY OF WAKE)

6

7 I, LISA A. WHEELER, RPR, CRR, a

8 Notary Public within and for the State of New

9 York, do hereby certify:

10 That GRANT SCOTT, the witness whose

11 deposition is hereinbefore set forth, having

12 produced satisfactory evidence of

13 identification and having been first duly sworn

14 by me, according to the emergency video

15 notarization requirements contained in G.S.

16 10B-25, and that such deposition is a true

17 record of the testimony given by such witness.

18 I further certify that I am not

19 related to any of the parties to this action by

20 blood or marriage; and that I am in no way

21 interested in the outcome of this matter.

22 IN WITNESS WHEREOF, I have hereunto

23 set my hand this 21st day of January, 2021.

24 -----Lisa A. Wheeler-----

25 LISA A. WHEELER, RPR, CRR

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2 THE WITNESS: Thank you.

3 MR. CLARK: We will reserve our

4 questions.

5 THE WITNESS: I appreciate it, John.

6 MR. MORRIS: Take care. Thanks for

7 your time and your -- and your diligence.

8 I do appreciate it. Take care, guys.

9 THE REPORTER: Okay.

10 MR. CLARK: Thank you.

11 MR. HOGWOOD: No questions from us.

12 (Time Noted: 4:50 p.m.)

13

14

15 -----

16 GRANT SCOTT

17

18 Subscribed and sworn to before me

19 this day of 2021.

20

21 -----

22

23

24

25

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APPENDIX 13

Between

CLO HOLDCO, LTD.

And

HARBOURVEST DOVER STREET IX INVESTMENT L.P.

And

HARBOURVEST 2017 GLOBAL AIF L.P.

And

HARBOURVEST 2017 GLOBAL FUND L.P.

And

HV INTERNATIONAL VIII SECONDARY L.P.

And

HARBOURVEST SKEW BASE AIF L.P.

And

HIGHLAND CAPITAL MANAGEMENT, L.P.

And

LEE BLACKWELL PARKER, III

And

QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # 3058311

And

QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # 1469811

And

QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # 1470612

And

QUEST IRA, INC., FBO NEIL DESAI, ACCT. # 3059211

And

HIGHLAND CLO FUNDING, LTD.

And

HIGHLAND HCF ADVISOR, LTD.

MEMBERS AGREEMENT RELATING TO THE COMPANY

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THIS AGREEMENT is made the 15th day of November 2017

BETWEEN

- (1) **CLO HOLDCO, LTD.** whose registered office address is at Intertrust Corporate Services (Cayman) Limited, 190 Elgin Avenue, George Town, Grand Cayman KY1-9005, Cayman Islands;
- (2) **HARBOURVEST DOVER IX INVESTMENT L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (3) **HARBOURVEST 2017 GLOBAL AIF L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (4) **HARBOURVEST 2017 GLOBAL FUND L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (5) **HV INTERNATIONAL VIII SECONDARY L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (6) **HARBOURVEST SKEW BASE AIF L.P.** of c/o HarbourVest Partners, LLC, One Financial Center, 44th Floor, Boston, MA 02111, USA
- (7) **HIGHLAND CAPITAL MANAGEMENT, L.P.** of 300 Crescent Court, Suite 700, Dallas, Texas 75201, USA
- (8) **LEE BLACKWELL PARKER, III** of 300 Crescent Court, Suite 700, Dallas, Texas 75201, USA
- (9) **QUEST IRA, INC., FBO LEE B. PARKER III, ACCT. # 3058311** of 17171 Park Row #100, Houston, Texas 77084, USA
- (10) **QUEST IRA, INC., FBO HUNTER COVITZ, ACCT. # 1469811** of 17171 Park Row #100, Houston, Texas 77084, USA
- (11) **QUEST IRA, INC., FBO JON POGLITSCH, ACCT. # 1470612** of 17171 Park Row #100, Houston, Texas 77084, USA
- (12) **QUEST IRA, INC., FBO NEIL DESAI, ACCT. # 3059211** of 17171 Park Row #100, Houston, Texas 77084, USA

(together the "**Members**") and

- (13) **HIGHLAND CLO FUNDING, LTD.**, with registration number 60120 whose registered office is at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands (the "**Company**") and
- (14) **HIGHLAND HCF ADVISOR, LTD.**, whose registered address is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "**Portfolio Manager**").

WHEREAS:

- (A) The Company is a limited company incorporated under the laws of the Island of Guernsey on 30 March 2015.
- (B) The Company has been established to provide its investors with exposure to CLO Notes on both a direct basis and indirect basis and senior secured loans on an indirect basis, through the use of the investments described in its investment policy as set forth in the Offering Memorandum dated 15 November 2017, the (the "**Offering Memorandum**"), subject to the restrictions set forth therein.

- (C) The Members are the owners of the entire issued capital of the Company.
- (D) The Parties are entering into this Agreement to regulate the relationship between them and the operation and management of the Company.

OPERATIVE PROVISIONS

1. INTERPRETATION

In this Agreement, including the Schedule:

- 1.1 the following words and expressions shall have the following meanings, unless they are inconsistent with the context:

"Adherence Agreement" means the agreement under which a person agrees to be bound by the terms of this Agreement in the form substantially similar as set out in the Schedule;

"Advisers Act" shall mean the U.S. Investment Advisers Act of 1940, as amended from time to time, and the rules and regulations of the U.S. Securities and Exchange Commission promulgated thereunder;

"Affiliate" means, with respect to a person, (i) any other person who, directly or indirectly, is in control of, or controlled by, or is under common control with, such person or (ii) any other person who is a director, officer or employee (a) of such person, (b) of any subsidiary or parent company of such person or (c) of any person described in clause (i) above. For the purposes of this definition, control of a person shall mean the power, direct or indirect, (i) to vote more than 50% of the securities having ordinary voting power for the election of directors of such persons or (ii) to direct or cause the direction of the management and policies of such person whether by contract or otherwise. For purposes of this definition, the management of an account by one person for the benefit of any other person shall not constitute "control" of such other person and no entity shall be deemed an "Affiliate" of the Company solely because the administrator or its Affiliates serve as administrator or share trustee for such entity;

"Agreement" means this agreement together with the Schedule;

"Articles" means the articles of incorporation of the Company as amended from time to time;

"Business" means the business of the Company as described in Recital (B);

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for ordinary banking business in Guernsey;

"Directors" means the directors of the Company from time to time;

"CLO Holdco" means CLO Holdco, Ltd. (or any permitted successor to the business of CLO Holdco, Ltd. or interest in the Company);

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Directors" means the directors of the Company from time to time;

"Dover IX" means HarbourVest Dover Street IX Investment L.P. (or any permitted successor to the business of HarbourVest Dover Street IX Investment L.P. or any interest in the Company);

"DOL" shall mean the U.S. Department of Labor, or any governmental agency that succeeds to the powers and functions thereof.

"DOL Regulations" shall mean the regulations of the DOL included within 29 C.F.R. section 2510.3-101.

"Dover IX" shall mean HarbourVest Dover Street IX Investment L.P. (or any permitted successor to the business of HarbourVest Dover Street IX Investment L.P. or interest in the Company);

"ERISA" shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time;

"ERISA Member" shall mean a Member that (a) is a "benefit plan investor" (as such term is defined in the DOL Regulations as modified by section 3(42) of ERISA) subject to the fiduciary responsibility provisions of part 4 of title I of ERISA or is a "plan" (as such term is defined in section 4975(e) of the Code) subject to section 4975 of the Code or (b) is designated as an ERISA Member by the General Partner in writing on or before the date at which such ERISA Member is admitted to the Company;

"HarbourVest Entities" means: Dover IX; HarbourVest 2017 Global AIF L.P.; HarbourVest 2017 Global Fund L.P.; HV International VIII Secondary L.P.; and HarbourVest Skew Base AIF L.P. (or any of their respective permitted successors to their businesses or interests in the Company);

"Highland Principals" means: Highland Capital Management, L.P.; Lee Blackwell Parker, III, Quest IRA, Inc., fbo Lee B. Parker III Acct. # 3058311; Quest IRA, Inc., fbo Hunter Covitz Acct. # 1469811; Quest IRA, Inc., fbo Jon Poglitsch Acct. # 1470612; Quest IRA, Inc., fbo Neil Desai Acct. # 3059211 (or any of their respective permitted successors to their businesses or interests in the Company);

"Law" means the Companies (Guernsey) Law, 2008, as amended;

"Member" means a person whose name is from time to time entered in the register of members of the Company as the holder of shares in the Company;

"Parties" means the parties to this Agreement and any other person who agrees to be bound by the terms of this Agreement under an Adherence Agreement;

"Shares" means ordinary shares in the Company;

"Subsidiary" shall have the meaning ascribed to it in the Law;

"Subscription and Transfer Agreement" means the Subscription and Transfer Agreement, dated as of 15 November 2017, entered into by and among CLO HoldCo, Ltd. and each of the Members and acknowledged and agreed by the Company and the Portfolio Manager.

Any capitalized terms used herein without definition have the meanings specified in the Offering Memorandum.

- 1.2 any reference to the Parties being obliged to procure shall so far as they are able includes, without limitation, procuring by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company;
- 1.3 any reference to a person includes, where appropriate, that person's heirs, personal representatives and successors;
- 1.4 any reference to a person includes any individual, body corporate, corporation, firm, unincorporated association, organisation, trust or partnership;
- 1.5 any reference to time shall be to Guernsey time;
- 1.6 except where the context otherwise requires words denoting the singular include the plural and vice versa and words denoting any one gender include all genders;

1.7 unless otherwise stated, a reference to a Clause or a Schedule is a reference to a Clause or a Schedule to this Agreement; and

1.8 Clause headings are for ease of reference only and do not affect the construction of any provision.

2. THE BUSINESS OF THE COMPANY

2.1 The Parties hereby agree that the objects and purpose of the Company shall be to carry on the Business.

2.2 The Parties shall so far as they are able (including without limitation by the exercise of votes which they directly or indirectly control at meetings of the Directors or general meetings of the Company) procure that (i) the Company's principal activities shall be the pursuit of the objects and purposes described in Clause 2.1 conducted in accordance with the provisions hereof and with the Offering Memorandum, the Subscription and Transfer Agreement and Articles of the Company and (ii) the Parties shall not take any action inconsistent with the provisions of the Offering Memorandum, including, without limitation the investment strategy set forth in the "Summary" and the applicable restrictions during and after the Investment Period and the suspension or termination of the Investment Period following a Key Person Event.

2.3 The Members shall (so long as they hold shares in the capital of the Company) use all reasonable endeavours to promote and develop the Business of the Company.

3. VOTING RIGHTS

3.1 The Parties agree that the following provisions of this Clause 3 shall apply during such period or periods as the Members parties hereto are Members.

3.2 The Parties shall procure that the Company shall not take any action at any meeting requiring the sanction of an ordinary or special resolution or by written resolution, in each case of the Directors or of the Members, without the affirmative vote or prior written consent, as applicable, of the Members totalling in the aggregate more than seventy-five percent (75%) of the Company, including, but not limited to, the following actions:

3.2.1 any issuance of new shares of the Company or a new class of shares of the Company or payment of any dividend by issuance of new shares of the Company, other than issuances of Shares pursuant to the Offering Memorandum and the Subscription and Transfer Agreement;

3.2.2 any alteration or cancellation of any rights of any Shares or of the Share capital of the Company,

3.2.3 any conversion or redemption of Shares, except pursuant to Clause 5.5,

3.2.4 any payment of commission in consideration for subscribing or agreeing to subscribe for any shares in the Company,

3.2.5 the creation of any lien on any Shares, except pursuant to the remedies in Clause 5.3. or

3.2.6 the suspension of the calculation of the NAV; other than a temporary suspension of the calculation of the NAV and NAV per Share by the Board of Directors during any period if it determines in good faith that such a suspension is warranted by extraordinary circumstances, including: (i) during any period when any market on which the Company's investments are quoted, traded or dealt in is closed, other than for ordinary holidays and weekends, or during periods in which dealings are restricted or suspended; (ii) during the existence of any state of affairs, including as a result of political, economic, military or monetary events or any circumstances outside the control of the Portfolio Manager or the Company, as a result of which,

in the reasonable opinion of the Portfolio Manager, the determination of the value of the assets of the Company, would not be reasonably practicable or would be seriously prejudicial to the Members taken as a whole; (iii) during any breakdown in the means of communication normally employed in determining the price or value of the Company's assets or liabilities, or of current prices in any market as aforesaid, or when for any other reason the prices or values of any assets or liabilities of the Company cannot reasonably be accurately ascertained within a reasonable time frame; (iv) during any period when the transfer of funds involved in the realization or acquisition of any investments cannot, in the reasonable opinion of the Portfolio Manager, be effected at normal rates of exchange; or (v) automatically upon liquidation of the Company.

4. **ADVISORY BOARD.**

- 4.1 Composition of Advisory Board. The Company shall establish an advisory board (the "**Advisory Board**") composed of two individuals, one of whom shall be a representative of CLO Holdco and one of whom shall be a representative of Dover IX (or, in each case, or any permitted successor to the interest in the Company of such Member). No voting member of the Advisory Board shall be a controlled Affiliate of the Portfolio Manager (including, for the avoidance of doubt, following a permitted transfer of CLO Holdco's interest to an Affiliate of the Portfolio Manager, if applicable), it being understood that for the purposes of this sentence none of CLO Holdco, its wholly-owned subsidiaries nor any of their respective directors or trustees shall be deemed to be a controlled Affiliate of the Portfolio Manager due to their pre-existing non-discretionary advisory relationship with the Portfolio Manager. None of the members of the Advisory Board shall receive any compensation (other than reimbursement for reasonable and documented out-of-pocket expenses) in connection with their position on the Advisory Board. The Company shall bear any fees, costs and expenses related to the Advisory Board.
- 4.2 Meetings of Advisory Board; Written Consents. The Advisory Board shall meet with the Portfolio Manager at such times as requested by the Portfolio Manager from time to time. The quorum for a meeting of the Advisory Board shall be all of its members entitled to vote. All actions taken by the Advisory Board shall be (i) by a unanimous vote of all of the members of the Advisory Board in attendance in a meeting at which a quorum is present and entitled to vote and not abstaining from voting or (ii) by a written consent in lieu of a meeting signed by all of the members of the Advisory Board entitled to consent and not abstaining from consenting. Meetings of the Advisory Board may be held in person, by telephone or by other electronic device.
- 4.3 Functions of Advisory Board. The Advisory Board shall provide (or determine not to provide) any consents or approvals expressly contemplated by this Agreement and the Offering Memorandum to be provided by the Advisory Board and, at the request of the Portfolio Manager in its sole discretion, provide general advice (which, for the avoidance of doubt, shall be non-binding) to the Portfolio Manager or the Company with regard to Company activities and operations and other matters. For the avoidance of doubt, no consent or approval of the Advisory Board shall be required for any action or determination expressly permitted or contemplated hereunder or in the Offering Memorandum and not conditioned on such a consent or approval. The Portfolio Manager shall not act contrary to the advice of the Advisory Board with respect to any action or determination expressly conditioned herein or in the Offering Memorandum on the consent or approval of the Advisory Board. Without limiting the foregoing, the Advisory Board shall be authorized to give any approval or consent required or deemed necessary or advisable under the Advisers Act on behalf of the Company and the Members, including under Section 206(3) of the Advisers Act. The Portfolio Manager may from time to time in its discretion request the Advisory Board to review and ratify certain Company matters. The consent of the Advisory Board shall be required to approve the following actions: (i) any extension of the Investment Period; (ii) any extension of the Term (other than an automatic extension following an extension of the Investment Period that has been approved by the Advisory Board); (iii) any allotment of additional equity securities by the Company; and (iv) any investment in a Related Obligation or any other transaction between the Company or any entity in which the Company holds a direct or indirect interest, on the one hand, and Highland or any of its Affiliates, on the other hand and (v) other matters as set forth in the Offering

Memorandum. Notwithstanding the foregoing or anything to the contrary set forth herein, no transaction that is specifically authorized in the governing documents of the Company shall require approval of the Advisory Board, including, without limitation, sales or securitizations of all or a portion of the Company's loan portfolio into new Qualifying CLOs (i.e. the transfer of warehoused assets into new Qualifying CLOs), investments in CLO Notes issued by CLOs managed by Highland Affiliates, and the NexBank Credit Facility and any Permitted NexBank Credit Facility Amendments, in each case as described in the Offering Memorandum. Any such approval, consent or ratification given by the Advisory Board shall be binding on the Company and the Members. Neither the Advisory Board nor any member thereof shall have the power to bind or act for or on behalf of the Company in any manner, and no shareholder who appoints a member of the Advisory Board shall be deemed to be an Affiliate of the Company or Highland solely by reason of such appointment.

- 4.4 Term of Members of Advisory Board. A member of the Advisory Board shall be deemed removed from the Advisory Board (i) if such member is no longer an officer, director, manager, trustee, employee, consultant or other representative of CLO Holdco or Dover IX, as applicable, or their respective Affiliates and shall be replaced as soon as practicable with a representative of CLO Holdco or Dover IX, or their respective Affiliates, as applicable, or (ii) if the Member represented by such member either becomes a Defaulting Member or such member ceases to be eligible to represent such Member pursuant to Clause 4.1.
- 4.5 No Duties to Other Members. No Advisory Board member who is the representative of any Member shall, to the extent permitted by law, owe a fiduciary duty to the Company or any other Member (other than the duty to act in good faith), and may, to the fullest extent permitted by law, in all instances act in such member's own interest and in the interest of the Member that appointed such member.

5. **DEFAULTING MEMBERS**

- 5.1 In the event any Member defaults in its obligation to pay the full amount of the purchase price of Shares called for settlement under the Subscription and Transfer Agreement on the applicable Settlement Date (such unpaid amount, an "**Outstanding Settlement Amount**"), the Portfolio Manager, on behalf of the Company, shall provide written or telephonic notice of such default to such Member. If such default is not cured within 5 business days after written (or if applicable telephonic or email) notice thereof given by the Portfolio Manager, on behalf of the Company, has been received by such Member, such Outstanding Settlement Amount shall automatically accrue interest on a retroactive basis from the date such Outstanding Settlement Amount was due at 12% (the "**Default Interest Rate**") (which interest, once paid, shall not be applied to the purchase of the unsettled Shares of such Member, but which will upon receipt be distributed pro rata to those Members who have funded any such Outstanding Settlement Amounts pursuant to this Clause 5). No such Shares which have failed to be settled will be issued to any Member until settlement of the full amount of the purchase price has been made. In addition, if such default is not cured within 10 business days after written or telephonic notice thereof given by the Portfolio Manager, on behalf of the Company, has been received by such Member (a "**Defaulting Member**"), the following provisions shall apply:
 - 5.2 Whenever the vote or consent of the Defaulting Member would otherwise be required or permitted hereunder or under the Articles, the Defaulting Member shall not be entitled to participate in such vote or consent in respect of his existing shareholding and with respect to any representative of such Defaulting Member on the Advisory Board, and such vote or consent shall be calculated as if such Defaulting Member were not a Member and, as applicable, any representative of such Defaulting Member on the Advisory Board were not a member of the Advisory Board.
 - 5.3 The Portfolio Manager, on behalf of the Company, may pursue and enforce all rights and remedies available, including the commencement of legal proceedings against the Defaulting Member to collect the Outstanding Settlement Amounts, together with interest thereon for the account of the Company from the date due at the Default Interest Rate, plus the costs and expenses of collection (including attorneys' fees and expenses).

- 5.4 The Portfolio Manager, on behalf of the Company, may (at the sole cost of the Defaulting Member) borrow funds from any person (other than the Defaulting Member or its Affiliates) to cover such shortfall and/or advance all or a portion of the Defaulting Member's Outstanding Settlement Amount to the Company on behalf of the Defaulting Member, and such advance shall be repaid by the Defaulting Member to the Portfolio Manager, on behalf of the Company, with interest for the account of the Portfolio Manager, on behalf of the Company, on the amount outstanding from time to time commencing on the date of the advance at the Default Interest Rate. To the extent the Portfolio Manager, on behalf of the Company, advances funds to the Company on behalf of a Defaulting Member, all distributions from the Company that would otherwise be made to the Defaulting Member shall be paid to the Portfolio Manager, on behalf of the Company, (with any such amounts being applied first against accrued but unpaid interest and then against principal), until all amounts payable by the Defaulting Member to the Portfolio Manager, on behalf of the Company, under this Clause 5.4 (including interest) have been paid in full.
- 5.5 The Portfolio Manager, on behalf of the Company, may elect, upon notice to the Defaulting Member, to redeem the Defaulting Member's shares in an amount equal to 50% of the outstanding amount existing as of the date of the default at a price of \$0.0001 per Share. Thereupon, the commitment of the Defaulting Member under the Subscription and Transfer Agreement shall be zero, the Defaulting Member shall not be obligated to make any further settlements, the voting capital of such Defaulting Member and of each other Member shall be re-determined as of the date of such default to reflect the new commitment of the Defaulting Member, and the Portfolio Manager shall revise the books and records of the Company to reflect the reduction of the commitment of the Defaulting Member. The Members agree (x) that the damages suffered by the Company as the result of a failure by a Member to settle a commitment to purchase Shares that is required by this Agreement cannot be estimated with reasonable accuracy and (y) that the foregoing provisions of this Clause 5.5 shall act as liquidated damages for the default by the Defaulting Member (which each Member hereby agrees are reasonable).
- 5.6 The Board may offer to the non-Defaulting Members (pro rata in accordance with their respective Commitments) the option of purchasing the Defaulting Member's unsettled Shares on the terms set forth in the applicable Settlement Notice (as defined in the Subscription and Transfer Agreement).
- 5.7 At the election of the Board, distributions of dividends otherwise payable to the Defaulting Member under the Articles shall not be paid to the Defaulting Member, but instead shall be applied against the amount of the Outstanding Settlement Amount (plus interest at the Default Interest Rate and related costs); provided that any amounts so applied shall be deemed to have been distributed to the Defaulting Member under the Articles.
- 5.8 The Portfolio Manager may send an amended or new Settlement Notice to the Members other than the Defaulting Member in an amount equal to the Defaulting Member's Outstanding Settlement Amount and otherwise in accordance with the Subscription and Transfer Agreement.
- 5.9 Each Defaulting Member further appoints the Portfolio Manager as agent and attorney-in-fact for the Defaulting Member and hereby grants to the Portfolio Manager an irrevocable power of attorney to take all actions necessary on its behalf to sell, assign, or transfer the commitment to purchase unsettled Shares of such Defaulting Member pursuant to Clause 5.6 or as necessary on its behalf to effect the other remedies or rights set forth in this Clause 5; provided that the Portfolio Manager shall not bind any Defaulting Member to an indemnification or other similar obligation which guarantees the financial performance of the Company or which exceeds the ability of the Defaulting Member to provide indemnification under applicable law.

6. TRANSFERS OR DISPOSALS OF SHARES

- 6.1 No Member shall sell, pledge, charge, mortgage, assign, assign by way of security, transfer, convey, exchange or otherwise dispose of its Shares or its commitment to settle purchases of Shares under the Subscription and Transfer Agreement (each a "**Transfer**"), other than to an Affiliate of an initial Member party hereto, without the prior written consent of the Portfolio

Manager, which consent shall be in the sole discretion of the Portfolio Manager; provided that no such Transfer shall be made unless in the opinion of counsel reasonably satisfactory to the Portfolio Manager (who may be counsel for the Company, and which requirement for an opinion may be waived, in whole or in part, in the sole discretion of the Portfolio Manager) that:

- 6.1.1 such Transfer would not require registration under the Securities Act or any state securities or "Blue Sky" laws or other laws applicable to the Shares to be assigned or transferred and is conducted in conformance with the restrictions set forth in the Offering Memorandum;
 - 6.1.2 such Transfer would not be reasonably likely to cause the Company to be subject to tax in any jurisdiction other than of its incorporation on a net income basis, not be reasonably likely to cause the Company to become subject to registration as an investment company under the Investment Company Act of 1940, as amended;
 - 6.1.3 such Transfer would not cause the Company to be considered to be an entity whose underlying assets are considered to include "plan assets" by reason of investment by an "employee benefit plan" or "plan" in such entity pursuant to the U.S. Plan Assets Regulations; and
 - 6.1.4 such sale, assignment, disposition or transfer would not cause all or any portion of the assets of the Company to constitute "plan assets" under ERISA or the Code.
- 6.2 Prior to making any Transfer of Shares (other than Transfers to Affiliates of an initial Member or, in the case of CLO Holdco or a Highland Principal, to Highland, its Affiliates or another Highland Principal) a Member must first offer to the other Members a right to purchase the Shares, on a pro rata basis with respect to their current Shares, at the same price (which must be cash) as such Shares are proposed to be purchased by the prospective third party purchaser pursuant to an irrevocable offer letter. The other Members will have 30 days following receipt of the letter to determine whether to purchase their entire pro rata portion of the Shares proposed to be Transferred. If the other Members do not accept the offer, the Member may (subject to complying with the other Transfer restrictions in this Agreement) Transfer the applicable Shares that such Members have not elected to purchase to a third party at a price equal to or greater than the price described in the offer letter, provided that if the Member has not (a) entered into a definitive agreement to effect such sale within 90 days after the expiration of the period that the other Members have to accept the offer in the offer letter or (b) consummated the sale within 120 day after the entry into the definitive agreement to consummate the sale, it must comply with these right of first refusal procedures again. Any Member (other than the Member proposing to Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to any other Member (subject to complying with the other Transfer restrictions in this Agreement), any initial Member (other than the Member proposing to Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to an Affiliate (subject to complying with the other Transfer restrictions in this Agreement), and CLO Holdco and the Highland Principals (unless such Member is the Member proposing the Transfer its Shares) may assign its right to purchase its pro rata portion of the Shares to Highland, an Affiliate of Highland or other Highland Principals (subject to complying with the other Transfer restrictions in this Agreement).
- 6.3 No Highland Principal may transfer his or its interests in the Company other than (i) to a trust or other tax or estate planning vehicle or (ii) to the Portfolio Manager, its Affiliates or another Highland Principal upon the termination of such Highland Principal's (or the beneficial owner of such Highland Principal, if applicable) employment by Highland Capital Management, L.P.
- 6.4 Any transferor of any Share shall remain bound by the terms of this Agreement applicable to it prior to such transfer and that nothing in this Agreement shall constitute a waiver of any rights a Party to this Agreement may have by reason of a breach of this Agreement by a transferor prior to transfer. The transferor and/or the transferee shall bear all costs of any Transfer.
- 6.5 The Parties agree not to Transfer their Shares to any person unless such transferee agrees to be bound by the terms of this Agreement.
- 6.6 All Adherence Agreements executed pursuant to this Clause shall be executed by the transferee or allottee and each Party.

7. **CONFIDENTIALITY**

- 7.1 Each Party agrees to keep any information received by it pursuant to this Agreement or relating to the Business as confidential and not (save with the relevant Party's consent or as may be required by Law or the rules of any regulatory authority or any stock exchange) disclose to any person such information.
- 7.2 Notwithstanding the foregoing, the Parties agree that the HarbourVest Entities may disclose to their limited partners and prospective limited partners (including any agents of such limited partners or prospective limited partners), clients and applicable governmental agencies (a) the name and address of the Company, (b) the capital commitment and the remaining capital commitment, (c) the net asset value of such HarbourVest Entity's interest in the Company, (d) the amount of distributions that have been made to such HarbourVest Entity by the Company and the amount of contributions that have been made by such HarbourVest Entity to the Company, (e) such ratios and performance information calculated by such HarbourVest Entity using the information in clauses (a) through (d) above, including the ratio of net asset value plus distributions to contributions (i.e., the "multiple") and such HarbourVest Entity's internal rate of return with respect to its investment in the Company, and (f) tax information with respect to the Company.

8. **DIVIDENDS**

- 8.1 The Company agrees that it shall not, and the Portfolio Manager agrees it shall not cause the Company to, make any dividends except pursuant to the section titled "Summary—Dividend Policy" of the Offering Memorandum.

9. **TERM OF THE COMPANY**

- 9.1 Each Party agrees to cause the winding up and dissolution of the Company after the ten year anniversary of the date hereof (the "**Term**"); provided that the Portfolio Manager, in its reasonable discretion, may postpone dissolution of the Company for up to 180 days in order to facilitate orderly liquidation of the investments; provided, further, that the Term shall be automatically extended for any amount of time for which the Investment Period may be extended.
- 9.2 Notwithstanding the foregoing, the Term may be extended with the consent of the Portfolio Manager and the Advisory Board for up to two successive periods of one year each.

10. **ERISA MATTERS**

- 10.1 The Portfolio Manager, the Company and each Member shall use their reasonable best efforts to conduct the affairs and operations of the Company so as to limit investment in the Company by "benefit plan investors" (within the meaning of the DOL Regulations as modified by section 3(42) of ERISA) to less than the U.S. Plan Threshold. In the event the U.S. Plan Threshold is met or exceeded, the Portfolio Manager, on behalf of the Company, may require any Non-Qualified Holder that is a U.S. Plan Investor to sell or transfer their Shares to a person qualified to own the same that is not a U.S. Plan Investor within 30 days and within such 30 days and to provide the Company with satisfactory evidence of such sale or transfer such that such sale or transfer, together with other sale or transfers pursuant to this Clause, would result in the investment in the Company by "benefit plan investors" (within the meaning of the DOL Regulations as modified by section 3(42) of ERISA) to be less than the U.S. Plan Threshold. Where the conditions above are not satisfied within 30 days after the serving of the notice to transfer, such Non-Qualified Holder will be deemed, upon the expiration of such 30 days, to have forfeited their Shares.

11. **TAX MATTERS**

- 11.1 PFIC. For each fiscal year of the Company, the Company will no later than 120 days after the end of such fiscal year, commencing with the first fiscal year for which the Company is determined to be a PFIC (a "passive foreign investment company"), furnish to each of the

HarbourVest Entities (x) all information necessary to permit such HarbourVest Entity or any of its partners to complete United States Internal Revenue Service Form 8621 with respect to their interests in the Company and (y) a PFIC Annual Information Statement under section 1295(b) of the Code with respect to the Company; provided that if the Company is unable to furnish such final information and Statement within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information and Statement on or before the 120th day after the end of such fiscal year.

- 11.2 CFC. The Company shall furnish to each of the HarbourVest Entities within 120 days after the end of each fiscal year of the Company, a United States Internal Revenue Service Form 5471 for such fiscal year, completed for all information concerning the Company required to be filed by such HarbourVest Entity or any of its partners (i.e., all portions applicable to the relevant category of filer other than page 1 items A-D and page 2 Schedule B), to the extent such Form 5471 is required to be filed by such HarbourVest Entity or any of its partners; provided that if the Company is unable to furnish such final information within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of each fiscal year.
- 11.3 Other Tax Information. The Company shall furnish to each of the HarbourVest Entities (a) within 120 days after the end of each fiscal year of the Company such other information reasonably requested by the HarbourVest Entities that any HarbourVest Entity may require in order for it or any of its partners to comply with its U.S. federal income tax reporting obligations with respect to its interest in the Company; provided that if the Company is unable to furnish such final information within such 120 days, then the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of such fiscal year and (b) promptly upon request such other information reasonably requested by such HarbourVest Entity in order to withhold tax or to file tax returns and reports or to furnish tax information to any of its partners with respect to the Company.
- 11.4 Withholding and Other Taxes. The Company will use reasonable best efforts to acquire investments that will not result in withholding or other taxes being imposed directly or indirectly on the Company by any jurisdiction with respect to income or distributions from such investments.

12. **AMENDMENTS TO CERTAIN AGREEMENTS**

- 12.1 The Portfolio Manager and the Company shall not amend or terminate, or agree to amend or terminate, the Memorandum or Articles of Incorporation of the Company or that certain Portfolio Management Agreement between the Portfolio Manager and the Company dated as of the date hereof (the "**Management Agreement**") without the consent of the Parties.
- 12.2 The Portfolio Manager agrees that it shall not assign its rights, duties and obligations under the Management Agreement without the consent of the Members totalling in the aggregate more than seventy-five percent (75%) of the Company. Notwithstanding the foregoing, the Portfolio Manager may, without the consent of the Members, assign any of its rights or obligations under the Management Agreement to an Affiliate; provided that such Affiliate (A) has demonstrated ability, whether as an entity or by its personnel, to professionally and competently perform duties similar to those imposed upon the Portfolio Manager pursuant to the Management Agreement, (B) has the legal right and capacity to act as Portfolio Manager thereunder and (C) shall not cause the Company or the pool of collateral to become required to register under the provisions of the Investment Company Act and such action does not cause the company to be subject to tax in any jurisdiction outside of its jurisdiction of incorporation.
- 12.3 The Company agrees that it shall not hire any portfolio manager without the consent of the Parties and such new portfolio manager shall be required to join and abide by this Agreement.

13. **FINANCIAL REPORTS**

- 13.1 The books and records of account of the Company shall be audited as of the end of each fiscal year of the Company by a nationally recognized independent public accounting firm selected by

the Portfolio Manager that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules. During the Term, the Portfolio Manager or the Company shall prepare and mail, deliver by fax, email or other electronic means or otherwise make available a financial report (audited in the case of a report sent as of the end of a fiscal year and unaudited in the case of a report sent as of the end of a quarter) to each Member on or before the 120th day after the end of each fiscal year and the 45th day after the end of each of the first three quarters of each fiscal year, setting forth for such fiscal year or quarter (a) the assets and liabilities of the Company as of the end of such fiscal year or quarter; (b) the net profit or net loss of the Company for such fiscal year or quarter; and (c) such Member's closing capital account balance as of the end of such fiscal year or quarter; provided that if the Portfolio Manager or the Company is unable to furnish final information with respect to any of the above, then the Portfolio Manager or the Company shall use its reasonable best efforts to furnish estimates of such information on or before the 120th day after the end of each fiscal year and the 45th day after the end of the first three quarters of each fiscal year. On or before the 60th day after the end of each fiscal year, the Portfolio Manager or the Company shall provide to each Member an unaudited draft of the financial report for such fiscal year.

- 13.2 After the end of each fiscal year or quarter, the Portfolio Manager or the Company shall cause to be delivered to the Advisory Board a reasonably detailed summary of the expenses incurred by the Company during such period.

14. **TERMINATION AND LIQUIDATION**

- 14.1 Save as provided for in Clause 13.2, this Agreement shall terminate:

- 14.1.1 when one Party holds all the Shares;
- 14.1.2 when a resolution is passed by the Company's Members or creditors, or an order made by a court or other competent body or person instituting a process that shall lead to the Company being wound up and its assets being distributed among the Company's creditors, Members or other contributors; or
- 14.1.3 with the written consent of all the Parties.

- 14.2 The following provisions of this Agreement remain in full force after termination: Clause 1 (Interpretation), Clause 7 (Confidentiality), this Clause, Clause 14 (Whole Agreement), Clause 16 (Assignments), Clause 17 (Variation and Waiver), Clause 18 (Service of Notice), Clause 19 (General) and Clause 21 (Governing Law and Jurisdiction).

- 14.3 Termination of this Agreement shall not affect any rights or liabilities that the Parties may have accrued under it.

- 14.4 Where the Company is to be wound up and its assets distributed, the Parties shall agree a suitable basis for dealing with the interests and assets of the Company and shall endeavour to ensure that:

- 14.4.1 all existing contracts of the Company are performed to the extent that there are sufficient resources;
- 14.4.2 the Company shall not enter into any new contractual obligations;
- 14.4.3 the Company is dissolved and its assets are distributed as soon as practical; and
- 14.4.4 any other proprietary information belonging to or originating from a Party shall be returned to it by the other Parties.

15. **WHOLE AGREEMENT**

- 15.1 This Agreement, and any documents referred to in it, constitute the whole agreement between the Parties and supersede any arrangements, understanding or previous agreement between them relating to the subject matter they cover.
- 15.2 Each Party acknowledges that in entering into this Agreement, and any documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, assurance or warranty of any person other than as expressly set out in this Agreement or those documents.
- 15.3 Nothing in this Clause 14 operates to limit or exclude any liability for fraud.

16. **STATUS OF AGREEMENT**

- 16.1 Each Party shall, to the extent that it is able to do so, exercise its voting rights and other powers in relation to the Company to procure that the provisions of this Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of the Agreement.
- 16.2 If any provision in the memorandum of incorporation of the Company or the Articles conflicts with any provision of this Agreement, the provisions of this Agreement shall prevail as between the Parties. Each of the Parties shall, to the extent that it is able to do so, exercise its voting rights and other powers in relation to the Company to procure the modification of the memorandum of association of the Company or the Articles (as the case may be) in order to eliminate the conflict, but this Agreement shall not itself constitute a modification of the memorandum of association of the Company or the Articles.

17. **ASSIGNMENTS**

Save as expressly permitted by this Agreement, no person may assign, or grant any security interest over, any of its rights under this Agreement or any document referred to in it without the prior written consent of the Parties.

18. **VARIATION AND WAIVER**

- 18.1 A variation of this Agreement shall be in writing and signed by or on behalf of the Parties.
- 18.2 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the person to which the waiver is addressed and the circumstances for which it is given.
- 18.3 A person that waives a right in relation to one person, or takes or fails to take any action against that person, does not affect its rights against any other person.

19. **SERVICE OF NOTICE**

- 19.1 Any notice required to be given by any of the Parties may be sent by post or facsimile to the address and facsimile number of the addressee as set out in this Agreement, in either case marked for the attention of the relevant person named below, or to such other address and/or facsimile number and/or marked for the attention of such other person as the addressee may from time to time have notified for the purposes of this Clause.

19.1.1 to the Company:
Address:
First Floor, Dorey Court, Admiral Park
St Peter Port, Guernsey GY1 6HJ
Channel Islands

19.1.2 to CLO Holdco:

Address:
c/o Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
Attn: General Counsel
Tel: +1 (972) 628-4100
Email: Notices@highlandcapital.com

19.1.3 to any HarbourVest Entity:

Address:
c/o HarbourVest Partners, LLC
One Financial Center, 44th Floor
Boston, MA 02111
USA
Attn: Michael Pugatch
Tel: +1 (617) 348-3712
F
Email: mpugatch@harbourvest.com

19.1.4 to any other Party: by post or hand delivery only to the address specified in the register of members of the Company.

19.2 Communications sent by post shall be deemed to have been received 24 hours after posting. Communications sent by facsimile transmission shall be deemed to have been received at the time the transmission has been received by the addressee **PROVIDED THAT** if the facsimile transmission, where permitted, is received after 5.00pm or on a day which is not a Business Day, it shall be deemed to have been received 11.00am the Business Day following thereafter.

19.3 In proving service by post it shall only be necessary to prove that the notice was contained in an envelope which was duly addressed and posted in accordance with this Clause and in the case of facsimile transmission it shall be necessary to prove that the facsimile was duly transmitted to the correct number.

20. **GENERAL**

20.1 Each of the Parties hereby agree not to enter into or abide by any agreement whether written or oral with any one or more of the other Parties in respect of the voting of Shares or the submission of Member resolutions to any Members for voting by them, or otherwise to direct or influence, or attempt to direct or influence, the day-to-day management of the Company, either directly or indirectly, other than in order to comply with the other terms of this Agreement or the Articles. In this regard, each of the Parties agrees to not to direct or influence or to attempt to direct or influence any of the Directors through any employment relationship that the Directors may have outside of the Company other than in order to comply with the other terms of this Agreement or the Articles. Each of the Parties hereby agree that this provision shall continue to apply to them whether or not they are or remain a Member.

20.2 Unless otherwise provided, all costs in connection with the negotiation, preparation, execution and performance of this Agreement, shall be borne by the Party that incurred the costs.

20.3 The Parties are not in partnership with each other and there is no relationship of principal and agent between them.

20.4 All transactions entered into between any Party and the Company shall be conducted in good faith and on the basis set out or referred to in this Agreement or, if not provided for in this Agreement, as may be agreed by the Parties and, in the absence of such agreement, on an arm's length basis.

20.5 Each Party shall at all times act in good faith towards the other Parties and shall use all reasonable endeavours to ensure that this Agreement is observed.

20.6 Each Party shall promptly execute and deliver all such documents, and do all such things, as the other Parties may from time to time reasonably require for the purpose of giving full effect to the provisions of this Agreement.

20.7 This Agreement may be executed in any number of counterparts, each of which is an original and which together have the same effect as if each Party had signed the same document. This Agreement may not be amended except with the consent of each Party.

21. STATUS OF AGREEMENT

21.1 The Parties shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and its Business to be administered as provided in this Agreement.

21.2 If there is an inconsistency between any of the provisions of this agreement and the provisions of the Articles, the provisions of this agreement shall prevail as between the Parties.

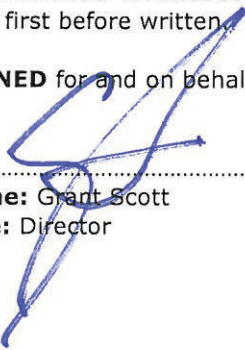
22. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the Island of Guernsey and each of the Parties submits to the non-exclusive jurisdiction of the Royal Courts of the Island of Guernsey.

[Signature Page Follows.]

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed the day and year first before written.

SIGNED for and on behalf of **CLO HOLDCO, LTD.**

By:.....

Name: Grant Scott

Title: Director

SIGNED for and on behalf of
HARBOURVEST DOVER STREET IX INVESTMENT L.P.

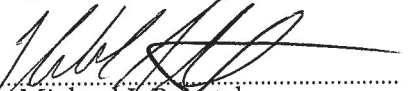
By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager

By: 

Name: Michael J. Pugatch
Title: Authorized Person

SIGNED for and on behalf of
HARBOURVEST 2017 GLOBAL AIF L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager

By: 

Name: Michael J. Pugatch
Title: Authorized Person

SIGNED for and on behalf of
HARBOURVEST 2017 GLOBAL FUND L.P.

By: HarbourVest 2017 Global Associates L.P.,
its General Partner

By: HarbourVest GP LLC,
its General Partner

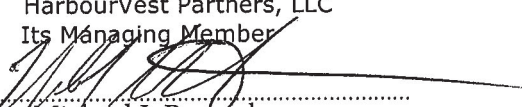
By: HarbourVest Partners, LLC,
its Managing Member

By: 

Name: Michael J. Pugatch
Title: Managing Director

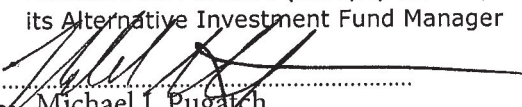
SIGNED for and on behalf of
HV INTERNATIONAL VIII SECONDARY L.P.

By: HIPEP VIII Associates L.P.
Its General Partner
By: HarbourVest GP LLC
Its General Partner
By: HarbourVest Partners, LLC
Its Managing Member

By: 
Name: Michael J. Pugatch
Title: Managing Director

SIGNED for and on behalf of
HARBOURVEST SKEW BASE AIF L.P.

By: HarbourVest Partners (Europe) Limited,
its Alternative Investment Fund Manager

By: 
Name: Michael J. Pugatch
Title: Authorized Person


SIGNED



Lee Blackwell Parker, III

SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

Read and approved

By: 
Name: Emmanuel Maciel
Title: transactions supervisor

X 

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By:
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By:
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:
Name:
Title:


SIGNATURE PAGE TO MEMBERS' AGREEMENT

001703

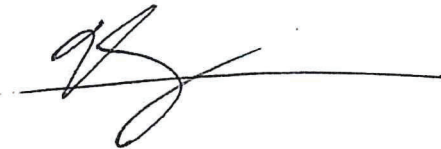
SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By: 
Name: Emmanuel Mader
Title: Transaction Supervisor

Read & approved



SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:.....
Name:
Title:


SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By: 
Name: Emmanuel Mager
Title: Transactions Supervisor

Read and Approved:

 11/7/17

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO LEE B. PARKER III, ACCT. # 3058311

By:.....
Name:
Title:


SIGNED for and on behalf of
QUEST IRA, INC.
FBO HUNTER COVITZ, ACCT. # 1469811

By:.....
Name:
Title:

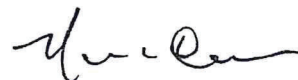
SIGNED for and on behalf of
QUEST IRA, INC.
FBO JON POGLITSCH, ACCT. # 1470612

By:.....
Name:
Title:

SIGNED for and on behalf of
QUEST IRA, INC.
FBO NEIL DESAI, ACCT. # 3059211

By: 
Name: Emmanuel Maes
Title: Transactional Supervisor

Read and approved



SIGNED for and on behalf of
HIGHLAND CAPITAL MANAGEMENT, L.P.

By: Strand Advisors, Inc.,
its General Partner



By:

Name: James Dondero

Title: President

SIGNED for and on behalf of
HIGHLAND HCF ADVISOR, LTD.


By:
Name: James Dondero
Title: President

SIGNED for and on behalf of
HIGHLAND CLO FUNDING, LTD.

By: 
Name: William Scott
Title: Director

SCHEDULE

Adherence Agreement

THIS ADHERENCE AGREEMENT is made on [•] 200[•]

BETWEEN:

- (1) [•] of [•] (the "**Covenantor**");
- (2) CLO HOLDCO, LTD. of [] (a "**Member**");
- (3) [•] of [] (a "**Member**");
- (4) [•] of [] (a "**Member**");
- (5) HIGHLAND CLO FUNDING, LTD., with registration number 60120 whose registered office is at First Floor, Dorey Court, Admiral Park, St Peter Port, Guernsey GY1 6HJ, Channel Islands (the "**Company**");
- (6) HIGHLAND HCF ADVISOR, LTD., registered address is at Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands (the "**Portfolio Manager**").

RECITAL

This Agreement is supplemental to the members agreement made on November 15 2017 between the Members, the Portfolio Manager and the Company (the "**Members Agreement**").

IT IS HEREBY AGREED as follows:

1. The Covenantor hereby confirms that he has been supplied with a copy of the Members Agreement and hereby covenants with each of the parties thereto to observe, perform and be bound by all the terms of the Members Agreement as if it were a party thereto.
2. Each of the other parties to the Members Agreement hereby covenants with the Covenantor that the Covenantor shall be entitled to the benefit of the terms of the Members Agreement as if he were a party thereto.
3. This Agreement shall be governed by and construed in accordance with Guernsey law.

IN WITNESS of which this Agreement has been executed by the Covenantor and each of the parties to the Members Agreement on the date shown above.